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Subtitle B—Regulations of the Offices of the Department of Education (Continued)

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

SOURCE: 57 FR 60323, Dec. 18, 1992, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as ''the Federal Family Education Loan (FFEL) programs,'' in which lenders used their own funds prior to July 1, 2010, to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools.

(1) The Federal Stafford Loan (Stafford) Program, which encouraged making loans to undergraduate, graduate, and professional students.

(2) The Federal Supplemental Loans for Students (SLS) Program, as in effect for periods of enrollment that began prior to July 1, 1994, which encouraged making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encouraged making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

(4) The Federal Consolidation Loan Program (Consolidation Loan Program), which encouraged making loans to borrowers for the purpose of consolidating loans: under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), PLUS, Perkins Loan programs, the Health Professions Student Loan (HPSL) including Loans for Disadvantaged Students (LDS) Program authorized by subpart II of part A of Title VII of the Public Health Services Act, Health Education Assistance Loans (HEAL) authorized by subpart I of Part A of Title VII of the Health Services Act, Nursing Student Loan Program loans authorized by subpart II of part B of title VIII of the Public Health Service Act, and existing loans obtained under the Consolidation Loan Program, and William D. Ford Direct Loan (Direct Loan) program loans, if the application for the Consolidation loan was received on or after November 13, 1997 and prior to July 1, 2010.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program as in effect for periods of enrollment that began prior to July 1, 1994; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the ''Federal Guaranteed Student Loan (GSL) programs.''

(iii) The Federal GSL programs were authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS (as in effect for periods of enrollment that began prior to July 1, 1994) programs were authorized, under limited circumstances, to operate in States in which a guaranty agency program did not serve all eligible students.

(Authority: 20 U.S.C. 1701 to 1087–2)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 33348, June 28, 1994; 59 FR 61215, Nov. 29, 1994; 64 FR 18974, 18975, Apr. 16, 1999; 64 FR 58952, Nov. 1, 1999; 66 FR 34762, June 29, 2001; 71 FR 45698, Aug. 9, 2006; 78 FR 65806, Nov. 1, 2013]

§ 682.101 Participation in the FFEL programs.

The following entities and persons participate in the FFEL programs:

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies made loans prior to July 1, 2010.

(b) Institutions of higher education, including most colleges, universities, graduate and professional schools, and many vocational, technical schools participated as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

(c) Students who met certain requirements, including enrollment at a participating school, borrowed under the Stafford Loan Program prior to July 1, 2010 and, for periods of enrollment that began prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students borrowed under the PLUS Program prior to July 1, 2010. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, PLUS, or Nursing Student Loan Program loans borrowed under the Consolidation Loan Program prior to July 1, 2010. The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

(Authority: 20 U.S.C. 1071 to 1087–2)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 61215, Nov. 29, 1994; 64 FR 18975, Apr. 16, 1999; 66 FR 34762, June 29, 2001; 71 FR 45698, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 78 FR 65806, Nov. 1, 2013]

§ 682.102 Repaying a loan.

(a) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy. A parent borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's or student's obligation to repay all or a portion of his or her loan may be cancelled if the student is unable to complete his or her program of study because the school closed or the borrower's or student's eligibility to borrow was falsely certified by the school. The obligation to repay all or a portion of a loan may be forgiven for Stafford Loan borrowers who enter certain areas of the teaching profession.

(b) *Stafford loan repayment.* In the case of a subsidized Stafford loan, a borrower is not required to make any principal payments during the time the borrower is in school. The Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. In the case of an unsubsidized Stafford loan, the borrower is responsible for interest during these periods. At the end

of the grace period, the repayment period begins. During the repayment period, for the subsidized and unsubsidized Stafford loan, the borrower pays both the principal and the interest accruing on the loan.

(c) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower, but who has not yet entered repayment on the Stafford loan, requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(d) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins on the day the loan is fully disbursed by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(e) *Consolidation loan repayment.* Generally, the repayment period for a Consolidation loan begins on the day the loan is disbursed. The first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(f) *Deferment of repayment.* Repayment of principal on a FFEL program loan may be deferred under the circumstances described in § 682.210.

(g) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1071 to 1087–2)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25744, May 17, 1994; 59 FR 33348, June 28, 1994; 64 FR 18975, Apr. 16, 1999; 64 FR 58952, Nov. 1, 1999; 68 FR 75428, Dec. 31, 2003; 71 FR 45698, Aug. 9, 2006; 78 FR 65806, Nov. 1, 2013]

§ 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL and Federal GSL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL and Federal GSL programs are subject to subparts C, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL and Federal GSL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087–2)

[57 FR 60323, Dec. 18, 1992, as amended at 64 FR 18975, Apr. 16, 1999; 64 FR 58952, Nov. 1, 1999; 78 FR 65806, Nov. 1, 2013]

Subpart B—General Provisions

§ 682.200 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Expected family contribution (EFC)
Federal Consolidation Loan Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal Work-Study (FWS) Program
Full-time student
Half-time student
Independent student
National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)
Payment period
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Undergraduate student

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Correspondence course
Credit hour
Educational program
Federal Family Education Loan Program (formerly known as the Guaranteed Student Loan (GSL) Program)

Foreign institution
Institution of higher education (§ 600.4)
Nationally recognized accrediting agency
Postsecondary Vocational Institution
Preaccredited
Secretary
State

(3) The definition for cost of attendance is set forth in section 472 of the Act, as amended.

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the purchase of FFEL loans. The term ''Authority'' also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL Program loan was made.

Co-Maker: One of two married individuals who jointly borrow a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan. The term co-maker also includes one of two parents who are joint borrowers as previously authorized in the PLUS Program.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS or Consolidation loan, to make an installment payment when due, or to meet other terms of the promissory note, the Act, or regulations as applicable, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a holder, in the case of a Consolidation loan, or to a borrower, a school, or an escrow agent by issuance of an individual check, a master check or by electronic funds transfer that may represent loan amounts for borrowers.

Disposable income. That part of an individual's compensation from an employer and other income from any source, including spousal income, that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited, to Federal, State, and local taxes, Social Security contributions, and wage garnishment payments.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as, scholarships, grants, the net earnings from need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

(iii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to

cover postsecondary education expenses;

(iv) Fellowships or assistantships, except non-need-based employment portions of such awards;

(v) Insurance programs for the student's education; and

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans or subsidized and unsubsidized Federal Direct Stafford/Ford Loans, and Federal PLUS or Federal Direct PLUS Loans.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including the amounts of any TEACH Grant, unsubsidized Federal Stafford or Federal Direct Stafford/Ford Loans, Federal PLUS or Federal Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student's EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined;

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(iv) Any portion of the estimated financial assistance described in paragraph (1) of this definition that is included in the calculation of the student's expected family contribution (EFC);

(v) Non-need-based employment earnings;

(vi) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific amount of the cost of attendance and that component is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both;

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by title IV-B of the Act under which the Secretary directly insures lenders against losses.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an institution of higher education and ends on the day before the repayment period begins. See also ''Post-deferment grace period.'' For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an institution of higher education.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a ''guardian'' of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term ''eligible lender'' is defined in section 435(d) of the Act, and in paragraphs (2)–(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase ''subject to examination and supervision'' in section 435(d) of the Act means ''subject to examination and supervision in its capacity as a lender'';

(ii) The phrase ''does not have as its primary consumer credit function the making or holding of loans made to students under this part'' in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries. For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

(4) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(5)(i) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any individual or entity in order to secure applications for FFEL loans or FFEL loan volume. This includes but is not limited to—

(*1*) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower or to a school or school employee in exchange for applying for or accepting a FFEL loan from the lender;

(*2*) Payments or other benefits, including payments of stock or other securities, tuition payments or reimbursements, to a school, a school employee, any school-affiliated organization, or to any other individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(*3*) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and discloses that employment to school administrators and to prospective borrowers;

(*4*) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

(*5*) Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or its employees, of referral fees, finder fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(*6*) Compensation to an employee of a school's financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender's advisory board, commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service;

(*7*) Payment of conference or training registration, travel, and lodging costs for an employee of a school or school-affiliated organization;

(*8*) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(*9*) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders;

(*10*) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling and, as provided in § 682.604(a), exit counseling, and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(*11*) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions or to family members of such students, except to a student or borrower who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Technical assistance to a school that is comparable to the kinds of technical assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the FEDERAL REGISTER;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, including in-person

entrance and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with § 682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the FEDERAL REGISTER.

(iii) For the purposes of this paragraph (5)—

(A) The term ''school-affiliated organization'' is defined in § 682.200.

(B) The term ''applications'' includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL Consolidation loan application and promissory notes.

(C) The term ''other benefits'' includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

(6) The term eligible lender does not include any lender that—

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 2 CFR parts 180 and 3485) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 2 CFR parts 180 and 3485, of any person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

(7) An eligible lender may not make or hold a loan as trustee for a school, or for a school-affiliated organization as defined in this section, unless on or before September 30, 2006—

(i) The eligible lender was serving as trustee for the school or school-affiliated organization under a contract entered into and continuing in effect as of that date; and

(ii) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(8) As of January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization—

(i) Must not—

(A) Make a loan to any undergraduate student;

(B) Make a loan other than a Federal Stafford loan to a graduate or professional student; or

(C) Make a loan to a borrower who is not enrolled at that school;

(ii) Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act; and

(iii) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(A) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with § 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A–133, Appendix B, Compliance Supplement) is not audited as a ''major program'' (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a major program.

(B) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with § 682.305(c)(2)(i) through (iii).

(C) With regard to any school, the audit must include a determination that—

(*1*) The school used all payments and proceeds (i.e., special allowance and interest payments from borrowers, interest subsidy payments, proceeds from the sale or other disposition of loans) from the loans for need-based grant programs;

(*2*) Those need-based grants supplemented, rather than supplanted, the institution's use of non-Federal funds for such grants; and

(*3*) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

Master Promissory Note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

Nationwide consumer reporting agency. A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis and as defined in 15 U.S.C. 1681a(p).

Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under § 682.301(b) or special allowance payments under § 682.302.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have ''originated'' a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower. The lender must pass this fee on to the SLS or PLUS borrower.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time, an academic year, or the length of the student's program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years, or 25 years under an extended repayment schedule, from the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Stafford loans, the period that begins on the day after the expiration of the applicable grace

period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years or 25 years under an extended repayment schedule, from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower's grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years, or 25 years under an extended repayment schedule, from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 10, 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under the title IV student financial assistance programs, the making of six consecutive, on-time, voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. ''On-time'' means a payment received by the Secretary or a guaranty agency or its agent within 20 days of the scheduled due date.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again.

School. (1) An ''institution of higher education'' as that term is defined in 34 CFR 600.4.

(2) For purposes of an in-school deferment, the term includes an institution of higher education, whether or not it participates in any title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School-affiliated organization. A school-affiliated organization is any organization that is directly or indirectly related to a school and includes, but is not limited to, alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV-B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Subsidized Stafford Loan: A Stafford loan that qualifies for interest benefits under § 682.301(b) and special allowance under § 682.302.

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

Totally and permanently disabled. The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

Unsubsidized Stafford loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b) but do qualify for special allowance under § 682.302.

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141; E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235))

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.201 Eligible borrowers.

(a) *Student Stafford borrower*. Except for a refinanced SLS/PLUS loan, a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an unsubsidized Stafford loan, if the student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or unsubsidized Stafford loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant

and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

(3) For purposes of a dependent undergraduate student's eligibility for an additional unsubsidized Stafford loan amount, as described at § 682.204(d), is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., denial of a PLUS loan to a parent based on adverse credit, the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount on which there has been a total cessation of collection activity, including all principal, interest, collection costs, court costs, attorney fees, and late charges that have accrued on that amount up to the date of reaffirmation.

(ii) For purposes of paragraph (a)(4) of this section, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower or repayment schedule; or

(B) Making a payment on the loan.

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled.

(6) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower must—

(i) Obtain certification from a physician that the borrower is able to engage in substantial gainful activity;

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

(iii) If a borrower receives a new FFEL loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(i), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in accordance with § 682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(7) In the case of a borrower whose prior loan under title IV of the HEA was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010, the borrower must—

(i) Comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section; and

(ii) Sign a statement acknowledging that—

(A) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for

a total and permanent disability discharge or when the new loan is made unless that impairment substantially deteriorates; and

(B) Collection activity will resume on any loans in a conditional discharge period.

(8) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR part 668.32(e).

(9) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Student PLUS borrower.* A graduate or professional student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school is eligible to receive a PLUS Loan on or after July 1, 2006, if the student—

(1) Meets the requirements for an eligible student under 34 CFR 668;

(2) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of this section, if applicable;

(3) Has received a determination of his or her annual loan maximum eligibility under the Federal Subsidized and Unsubsidized Stafford Loan Program or under the Federal Direct Subsidized Stafford/Ford Loan Program and Federal Direct Unsubsidized Stafford/Ford Loan Program, as applicable; and

(4) Does not have an adverse credit history in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section, or obtains an endorser who has been determined not to have an adverse credit history, as provided for in paragraph (c)(1)(vii) of this section.

(c) *Parent PLUS borrower.* (1) A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e), if the parent—

(i) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(ii) Provides his or her and the student's social security number;

(iii) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.33;

(iv) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.35 and meets the requirements of judgment liens that apply to the student under 34 CFR 668.32(g)(3);

(v) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668;

(vi) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) of this section, as applicable; and

(vii) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history or obtains an endorser who has been determined not to have an adverse credit history as provided in paragraph (c)(2)(ii) of this section.

(viii) Has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(2)(i) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national consumer reporting agency. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(ii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt; or

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iii) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(iv) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(v) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(3) For purposes of paragraph (c)(1) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

(d) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(*1*) In a grace period preceding repayment;

(*2*) In repayment status;

(*3*) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(6)(iii) or the income-based repayment plan described in § 682.215;

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated;

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(D) Not in default status resulting from a claim filed under § 682.412.

(ii) Certifies that no other application for a Consolidation loan is pending; and

(iii) Agrees to notify the holder of any changes in address.

(2) A borrower may not consolidate a loan under this section for which the borrower is wholly or partially ineligible.

(e) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan before or after the date a Consolidation loan is made may receive a subsequent Consolidation loan;

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated;

(4) If the consolidation loan is in default or has been submitted to the guaranty agency for default aversion, the borrower may obtain a subsequent consolidation loan under the Federal Direct Consolidation Loan Program for purposes of obtaining an income contingent repayment plan or an income-based repayment plan; and

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using—

(i) The Public Service Loan Forgiveness Program; or

(ii) For FFEL Program loans first disbursed on or after October 1, 2008 (including Federal Consolidation Loans that repaid FFEL or Direct Loan program Loans first disbursed on or after October 1, 2008), the no accrual of interest benefit for active duty service members.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, and 1091)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.201, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(1) *Stafford Loan Program.* (i) For loans made prior to July 1, 1994, if the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on any FFEL Program loan, and the first disbursement was made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(*1*) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(*2*) 9 percent.

(iii) For a Stafford loan for which the first disbursement was made before October 1, 1992—

(A) If the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement was made on or after October 1, 1992, but before December 20, 1993, if the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(v) For a Stafford loan for which the first disbursement was made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement was made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that included or began on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement was made on or after July 1, 1995 and prior to July 1, 1998 the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement was made on or after July 1, 1998, and prior to July 1,

2006, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

(ix) For a Stafford loan for which the first disbursement was made on or after July 1, 2006, the interest rate is 6.8 percent.

(x) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement was made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(2) *PLUS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any refinanced PLUS loan, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992 and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 10 percent.

(iv) For a loan for which the first disbursement was made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement was made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(vi)(A) Beginning on July 1, 2001, and prior to July 1, 2006, the interest rate on the loans described in paragraphs (a)(2)(ii) through (iv) of this section is a variable rate applicable to each July 1–June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(*1*) 3.25 percent for loans described in paragraph (a)(2)(ii) of this section; or

(*2*) 3.1 percent for loans described in paragraphs (a)(2)(iii) and (iv) of this section.

(B) The interest rates calculated under paragraph (a)(2)(vi)(A) of this section shall not exceed the limits specified in paragraphs (a)(2)(ii)(B), (a)(2)(iii)(B), and (a)(2)(iv)(B) of this section, as applicable.

(vii) For a PLUS loan first disbursed on or after July 1, 2006, the interest rate is 8.5 percent.

(3) *SLS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992,

and for any refinance SLS loan, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 11 percent.

(iv)(A) Beginning on July 1, 2001, the interest rate on the loans described in paragraphs (a)(3)(ii) and (iii) of this section is a variable rate applicable to each July 1–June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(*1*) 3.25 percent for loans described in paragraph (a)(3)(ii) of this section; or

(*2*) 3.1 percent for loans described in paragraph (a)(3)(iii) of this section.

(B) The interest rates calculated under paragraph (a)(3)(iv)(A) of this section shall not exceed the limits specified in paragraphs (a)(3)(ii)(B) and (a)(3)(iii)(B) of this section, as applicable.

(4) *Consolidation Program.* (i) A Consolidation Program loan made before July 1, 1994 bears interest at the rate that is the greater of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(B) 9 percent.

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998 and prior to July 1, 2010, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)–(4) of this section.

(6) *Refund of excess interest paid on Stafford loans.*

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury

bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to—

(*1*) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(*2*) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to—

(*1*) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(*2*) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(*3*) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(*1*) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(*2*) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) *Conversion to Variable Rate.*

(i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(7)(i) of this section for any period prior to

the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(*1*) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(*2*) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with—

(*1*) A notice informing the borrower that the loan is being converted to a variable interest rate;

(*2*) A description of the rate to the borrower;

(*3*) The current interest rate; and

(*4*) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under § 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

(8) *Applicability of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (4) of this section, a loan holder must use the official electronic database maintained by the Department of Defense to identify all borrowers with an outstanding loan who are members of the military service, as defined in § 682.208(j)(10) and ensure the interest rate on a borrower's qualified loans with an outstanding balance does not exceed the six percent maximum interest rate under 50 U.S.C. 527, App. section 207(a) on FFEL Program loans made prior to the borrower entering military service status. For purposes of this paragraph (a)(8), the interest rate includes any other charges or fees applied to the loan.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums or Federal default fees to the borrower's unpaid principal balance in accordance with this section. This increase in the principal balance of a loan is called ''capitalization.''

(2) Except as provided in paragraph (b)(4) and (b)(5) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly. Capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2) (i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For Consolidation loans, the lender may capitalize interest as provided in paragraphs (b)(2) and (b)(3) of this section, except that the lender may capitalize the unpaid interest for a period of authorized in-school deferment only at the expiration of the deferment.

(6) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* (1)(i) For Stafford loans first disbursed prior to July 1, 2006, a lender may charge a borrower an origination fee not to exceed 3 percent of the principal amount of the loan.

(ii) For Stafford loans first disbursed on or after July 1, 2006, but before July 1, 2007, a lender may charge a borrower an origination fee not to exceed 2 percent of the principal amount of the loan.

(iii) For Stafford loans first disbursed on or after July 1, 2007, but before July 1, 2008, a lender may charge a borrower an origination fee not to exceed 1.5 percent of the principal amount of the loan.

(iv) For Stafford loans first disbursed on or after July 1, 2008, but before July 1, 2009, a lender may charge a borrower an origination fee not to exceed 1 percent of the principal amount of the loan.

(v) For Stafford loans first disbursed on or after July 1, 2009, but before July 1, 2010, a lender may charge a borrower an origination fee not to exceed .5 percent of the principal amount of the loan.

(vi) Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) A lender may charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to a borrower who qualifies for a subsidized Stafford loan. A lender must charge all such borrowers the same origination fee.

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraph (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph (c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

(5) A lender must charge a borrower an origination fee on a PLUS loan of 3 percent of the principal amount of the loan;

(6) A lender must deduct a pro rata portion of the fee (if charged) from each disbursement; and

(7) A lender must refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan—

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with §682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) *Insurance premium and Federal default fee.* (1) For loans guaranteed prior to July 1, 2006, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor (up to 1 percent of the principal amount of the loan) if that charge is provided for in the promissory note.

(2) For loans guaranteed on or after July 1, 2006 and prior to July 1, 2010, a lender may charge the borrower the amount of the Federal default fee paid by the lender to the guarantor (up to 1 percent of the principal amount of the loan) if that charge is provided for in the promissory note.

(3) If the borrower is charged the insurance premium or the Federal default fee, the amount charged must be deducted proportionately from each disbursement of the borrower's loan proceeds, if the loan is disbursed in more than one installment.

(4) The lender shall refund the insurance premium or Federal default fee paid by the borrower in accordance with the circumstances and procedures applicable to the return of origination fees, as described in paragraph (c)(7) of this section.

(e) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 15 days after it is due.

(f) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (f)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(g) *Special allowance.* Pursuant to §682.412(c), a lender may charge a borrower the amount of special allowance paid by the Secretary on behalf of the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091a)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22475, Apr. 29, 1994; 59 FR 61427, Nov. 30, 1994; 61 FR 60486, Nov. 27, 1996; 62 FR 63434, Nov. 28, 1997; 64 FR 18976, Apr. 16, 1999; 64 FR 58953, Nov. 1, 1999; 66 FR 34762, June 29, 2001; 71 FR 45700, Aug. 9, 2006; 72 FR 62000, Nov. 1, 2007; 74 FR 55991, Oct. 29, 2009; 78 FR 65807, Nov. 1, 2013; 80 FR 67236, Oct. 30, 2015]

EFFECTIVE DATE NOTE: At 81 FR 76079, Nov. 1, 2016, §682.202 was amended in paragraph (b)(1) by removing the words ''A lender'' and adding in their place ''Except as provided in §682.405(b)(4), a lender,'' eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely.

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Direct Subsidized Loan Program may not exceed the following:

(i) $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $3,500, as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $3,500 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Direct Subsidized Loan Program may not exceed the following:

(i) $4,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,500 as the—

$$\frac{\text{Number of semester, trimester, quarter or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Direct Subsidized Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for loans made prior to July 1, 2010 for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Direct Subsidized Loan Program, may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Direct Subsidized Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Direct Subsidized Loan Program may not exceed $5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Direct Subsidized Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) Except for a dependent undergraduate student who qualifies for additional Unsubsidized Stafford Loan funds because the student's parents are unable to borrow under the PLUS Loan Program, as described in paragraph (d) of this section, the total amount the dependent undergraduate student may borrow for any academic year under the Unsubsidized Stafford Loan Program in combination with the Direct Unsubsidized Loan Program is the same amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Direct Subsidized Loan program, plus—

(i) $2,000, for a program of study of at least a full academic year in length.

(ii) For a program of study that is at least one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \quad \text{or} \quad \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in § 682.201(a)(3), the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Direct Unsubsidized Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Direct Subsidized Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in § 682.201(a)(3) may borrow amounts under the Unsubsidized Stafford Loan Program in addition to any amount borrowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section. The additional amount that such a student may borrow for any academic year of study under the Unsubsidized Stafford Loan Program in combination with the Direct Unsubsidized Loan Program, in addition to the amounts allowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section for certain dependent undergraduate students—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $6,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $6,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $6,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) $6,000 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $6,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $7,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $7,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $12,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $6,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $7,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $7,000.

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(2) of this section.

(9) A dependent undergraduate student who qualifies for the additional Unsubsidized Stafford Loan amounts under this section in accordance with the conditions specified in § 682.201(a)(3) is not eligible to receive the additional Unsubsidized Stafford Loan amounts under paragraph (c)(1)(ii) of this section.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Direct Subsidized Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Loans and SLS Loans, but excluding the amount of capitalized interest, may not exceed the following:

(1) $31,000 for a dependent undergraduate student.

(2) $57,500 for an independent undergraduate student or a dependent undergraduate student under the conditions specified in § 682.201(a)(3).

(3) $138,500 for a graduate or professional student.

(f) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to—

(1) An undergraduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

(g) *PLUS Program annual limit.* The total amount of all PLUS Program loans that a parent or student may borrow for any academic year of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(h) *Minimum loan interval.* The annual loan limits applicable to a student apply to the length of the school's academic year.

(i) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, Unsubsidized Stafford loan, Direct Stafford loan, Direct Unsubsidized loan, SLS, PLUS, Perkins Loan, or HEAL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(j) *Maximum loan amounts.* In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(k) In determining a Stafford loan amount in accordance with § 682.204 (a), (c) and (d), the school must use the definition of academic year in 34 CFR 668.3.

(l) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under paragraphs (c), (d), and (e) of this section.

(Authority: 20 U.S.C. 1070g, 1078, 1078–2, 1078–3, 1078–8)

[59 FR 33350, June 28, 1994, as amended at 64 FR 18976, Apr. 16, 1999; 64 FR 58954, Nov. 1, 1999; 66 FR 34763, June 29, 2001; 67 FR 67078, Nov. 1, 2002; 71 FR 45700, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 73 FR 35495, June 23, 2008; 73 FR 36793, June 30, 2008; 74 FR 55991, Oct. 29, 2009; 78 FR 65808, Nov. 1, 2013]

§ 682.205 Disclosure requirements for lenders.

(a) *Repayment information*— (1) *Disclosures at or prior to repayment.* The lender must disclose the information described in paragraph (a)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford or Federal PLUS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 150 days before the first payment on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin, or a deferment under § 682.210(v), if applicable, is to end;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, a deferment under § 682.210(v), if applicable, is to end, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments based on the repayment schedule selected by the borrower;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule, and if interest has been paid, the amount of interest paid;

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's total payoff amount and time for repayment;

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit;

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually;

(xiii) A description of the options available to the borrower to avoid or be removed from default, as well as any fees associated with those options; and

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) *Required disclosures during repayment.* In addition to the disclosures required in paragraph (a)(1) of this section, the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms—

(i) The original principal amount of the borrower's loan;

(ii) The borrower's current balance, as of the time of the bill or statement;

(iii) The interest rate on the loan;

(iv) The total amount of interest for the preceding installment paid by the borrower;

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees;

(viii) The lender's or servicer's address and toll-free telephone number for repayment options, payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education's Web site for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(4) *Required disclosures for borrowers having difficulty making payments.* (i) Except as provided in paragraph (a)(4)(ii) of this section, the lender must provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) A disclosure under paragraph (a)(4)(i) of this section is not required if the borrower's difficulty has been resolved through contact with the borrower resulting from an earlier disclosure or other communication between the lender and the borrower.

(5) *Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.* (i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of—

(A) The date on which the loan will default if no payment is made;

(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five business days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

(b) *Exception to disclosure requirement.* In the case of a Federal Unsubsidized Stafford loan or a Federal PLUS loan, the lender is not required to provide the information in paragraph (a)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower or student on whose behalf the loan is made is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the Stafford and PLUS promissory notes and associated materials approved by the Secretary for purposes of complying with this section.

(c) *Borrower may not be charged for disclosures.* The lender must provide the information required by this section at no cost to the borrower.

(d) *Method of disclosure.* Any disclosure of information by a lender under this section may be through written or electronic means.

(e) *Notice of availability of income-sensitive and income-based repayment options.* (1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (e)(1) of this section.

(f) *Disclosure procedures when a borrower's address is not available.* If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under

this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1083(a))

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§§ 682.206–682.207 [Reserved]

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to nationwide consumer reporting agencies, responding to borrower inquiries, establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

(b)(1) An eligible lender of a FFEL loan shall report to each nationwide consumer reporting agency—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, no less frequently than every 90 days or quarterly after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to each nationwide consumer reporting agency the information required by paragraph (b)(1)(ii)–(v) of this section within 90 days of its acquisition of the loan.

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a consumer reporting agency that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), an eligible lender shall suspend consumer reporting agency reporting for a period not to exceed 120 days while the lender determines the enforceability of a loan.

(i) If the lender determines that a loan does not qualify for a discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must—

(A) Notify the consumer reporting agency of its determination; and

(B) Comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(ii) [Reserved]

(4) If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the borrower evidence specified in § 682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower or a student PLUS loan borrower is no longer enrolled at an institution of higher education on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(3)(i) If the borrower disputes the terms of the loan in writing and the lender does not resolve the dispute, the lender's response must provide the borrower with an appropriate contact at the guaranty agency for the resolution of the dispute.

(ii) If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to

limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule—

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule, as authorized and if practicable, for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment or transfer of ownership interest of a Stafford, PLUS, SLS, or Consolidation loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide, either jointly or separately, a notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments or communications must be sent;

(iv) The telephone numbers of both the assignor and the assignee;

(v) The effective date of the assignment or transfer of the loan;

(vi) The date, if applicable, on which the current loan servicer will stop accepting payments; and

(vii) The date on which the new loan servicer will begin accepting payments.

(2) If the assignor and assignee separately provide the notice required by paragraph (e)(1) of this section, each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term ''assigned'' is defined in § 682.401(b)(8)(ii).

(4) The assignee, or the assignor on behalf of the assignee, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of—

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that can be used to obtain information about the repayment of the loan.

(5) The requirements of this paragraph (e), as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

(f)(1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in § 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, provided false or erroneous information or took actions that caused the student or borrower—

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—

(A) The school notifies the lender under 34 CFR 668.21(a)(2)(ii) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term ''guaranty agency'' in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in § 682.411(h).

(h) *Notifying the borrower about a servicing change.* If an FFEL Program loan has not been assigned, but there is a change in the identity of the party to

whom the borrower must send subsequent payments or direct any communications concerning the loan, the holder of the loan shall, no later than 45 days after the date of the change, provide notice to the borrower of the name, telephone number, and address of the party to whom subsequent payments or communications must be sent. The requirements of this paragraph apply if the borrower is in a grace period or has entered the repayment period.

(i) A lender shall report enrollment and loan status information, or any Title IV loan-related data required by the Secretary, to the guaranty agency or to the Secretary, as applicable, by the deadline date established by the Secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

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§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is disbursed.

(2)(i) For a PLUS loan, the repayment period begins on the date of the last disbursement made on the loan. Interest accrues and is due and payable from the date of the first disbursement of the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Interest accrues and is due and payable from the date of the first disbursement of the loan. Except as provided in paragraph (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(iv) If the lender first learns after the fact that an SLS borrower has entered the repayment period, the repayment begins no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(v) The lender may establish a first payment due date that is no more than an additional 30 days beyond the period specified in paragraphs (a)(2)(i)–(a)(2)(iv) of this section in order for the

lender to comply with the required deadline contained in § 682.205(c)(1).

(3)(i) Except as provided in paragraph (a)(4) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency;

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education;

(C) For a borrower with a loan with a variable interest rate, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education; and

(D) For a borrower with a loan for which the applicable interest rate is fixed at 6.0 percent per year, 5.6 percent per year, or 6.8 percent per year, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than—

(A) 60 days following the first day that the repayment period begins;

(B) 60 days from the expiration of a deferment or forbearance period;

(C) 60 days following the end of the post deferment grace period;

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period; or

(E) An additional 30 days beyond the periods specified in paragraphs (a)(3)(ii)(A)–(a)(3)(ii)(D) of this section in order for the lender to comply with the required deadlines contained in § 682.205(a)(1).

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from a school, unless the lender has already disclosed repayment terms to the borrower and the new date is within the same month and year as the most recent date reported to the lender.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

(5) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(6)(i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase or decrease in amount during the repayment period. If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that—

(A) Provides for adjustments of the amount of the installment payment to reflect annual changes in the variable interest rate; or

(B) Contains no provision for an adjustment of the amount of the installment payment to reflect annual changes in the variable interest rate,

but requires the lender to grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 3 years of payments in accordance with § 682.211(i)(5) in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term.

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower—

(A) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule;

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender; or

(C) Chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under § 682.215(e)(1)(i) through (e)(1)(iii) within the time period specified by the lender.

(vi) Under a standard repayment schedule, the borrower is scheduled to pay either—

(A) The same amount for each installment payment made during the repayment period, except that the borrower's final payment may be slightly more or less than the other payments; or

(B) An installment amount that will be adjusted to reflect annual changes in the loan's variable interest rate.

(vii) Under a graduated repayment schedule—

(A)(*1*) The amount of the borrower's installment payment is scheduled to change (usually by increasing) during the course of the repayment period; or

(*2*) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(viii) Under an income-sensitive repayment schedule—

(A)(*1*) The amount of the borrower's installment payment is adjusted annually, based on the borrower's expected total monthly gross income received by the borrower from employment and from other sources during the course of the repayment period; or

(*2*) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) In general, the lender shall request the borrower to inform the lender of his or her income no earlier than 90 days prior to the due date of the borrower's initial installment payment and subsequent annual payment adjustment under an income-sensitive repayment schedule. The income information must be sufficient for the lender to make a reasonable determination of what the borrower's payment amount should be. If the lender receives late notification that the borrower has dropped below half-time enrollment status at a school, the lender may request that income information earlier than 90 days prior to the due

date of the borrower's initial installment payment;

(C) If the borrower reports income to the lender that the lender considers to be insufficient for establishing monthly installment payments that would repay the loan within the applicable maximum repayment period, the lender shall require the borrower to submit evidence showing the amount of the most recent total monthly gross income received by the borrower from employment and from other sources including, if applicable, pay statements from employers and documentation of any income received by the borrower from other parties;

(D) The lender shall grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 5 years of payments in accordance with § 682.211(i)(5) in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in a loan not being repaid within the maximum repayment term; and

(E) The lender shall inform the borrower that the loan must be repaid within the time limits specified under paragraph (a)(7) of this section.

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceed $30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a ''new borrower'' is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) Under an income-based repayment schedule, the borrower repays the loan in accordance with § 682.215.

(xi) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually, or at any time in the case of a borrower in an income-based repayment plan.

(xii) For purposes of this section, a lender shall, to the extent practicable require that all FFEL loans owed by a borrower to the lender be combined into one account and repaid under one repayment schedule. In that event, the word ''loan'' in this section shall mean all of the borrower's loans that were combined by the lender into that account.

(7)(i) Subject to paragraphs (a)(7)(ii) through (iv) of this section, and except as provided in paragraph (a)(6)(ix) a lender shall allow a borrower at least 5 years, but not more than 10 years, or 25 years under an extended repayment plan to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211 respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15- and 25–year periods, and from the 10-, 12-, 15-, 20-, 25-, and 30-year periods for repayment of a Consolidation loan pursuant to § 682.209(h).

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, except in the case of payments made under an income-based repayment plan, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Payment application and prepayment.* (1) Except in the case of payments made under an income-based repayment plan, the lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower's coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's next scheduled payment due date. Information related to next scheduled payment due date need not be provided to borrowers making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, extended, or income-based repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in § 682.211, or deferment described in § 682.210, has been approved.

(d) *Combined repayment of a borrower's student PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a student borrower, combine the borrower's, student PLUS and SLS loans held by it into a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is less than $7,500, the borrower shall repay the Consolidation loan in not more than 10 years;

(ii) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(iii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iv) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(v) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(vi) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) For the purpose of paragraph (e)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment

arrangements with the holder of the loan, does not include the unpaid balance on any defaulted loans.

(4) A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;

(ii) Except in the case of an income-based repayment schedule, must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(5) Upon receipt of the proceeds of a loan made under paragraph (e)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(f) *Treatment by a lender of borrowers' title IV, HEA program funds received from schools if the borrower withdraws.* (1) A lender shall treat a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing or by a Consolidation loan, the lender must transmit the amount of the payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund or a return of title IV, HEA program funds transmitted under paragraph (f)(2)(i) of this section, the holder of the loan promptly must provide written notice to the borrower that the holder has received the return of title IV, HEA program funds.

(g) Any lender holding a loan is subject to all claims and defenses that the borrower could assert against the school with respect to that loan if—

(1) The loan was made by the school or a school-affiliated organization;

(2) The lender who made the loan provided an improper inducement, as described in paragraph (5)(i) of the definition of *Lender* in § 682.200(b), to the school or any other party in connection with the making of the loan;

(3) The school refers borrowers to the lender; or

(4) The school is affiliated with the lender by common control, contract, or business arrangement.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1085)

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.209, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.210 Deferment.

(a) *General.* (1)(i) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) and paragraphs (s) through (v) of this section.

(ii) With the exception of a deferment authorized under paragraph (o) of this section, a borrower may continue to receive a specific type of deferment that is limited to a maximum period of time only if the total amount of time that the borrower has received the deferment does not exceed the maximum time period allowed for the deferment.

(2)(i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that begins after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3)(i) Interest accrues and is paid by—

(A) The Secretary during the deferment period for a subsidized Stafford loan and for all or a portion of a Consolidation loan that qualifies for interest benefits under § 682.301; or

(B) The borrower during the deferment period and, as applicable, the post-deferment grace period, on all other loans.

(ii) A borrower who is responsible for payment of interest during a deferment period must be notified by the lender, at or before the time the deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information, including an example, on the impact of capitalization of accrued, unpaid interest on loan principal, and on the total amount of interest to be paid over the life of the loan.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii), (iii), and (iv) of this section, the borrower, or the borrower's representative for purposes of paragraphs (i) and (t) of this section, must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date that the holder determines is the date that the condition entitling the borrower to the deferment first existed, except that an initial unemployment deferment as described in paragraph (h)(2) of this section cannot begin more than 6 months before the date the holder receives a request and documentation required for the deferment.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of an in-school deferment, the student's anticipated graduation date as certified by an authorized official of the school; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 270- or 330-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under § 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment on that loan, unless the borrower has made payment arrangements acceptable to the lender prior to the payment of a default claim by a guaranty agency.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (s) of this section.

(11) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender shall grant a request for deferment if both individuals simultaneously meet the requirements of this section for receiving the same, or different deferments.

(b) *Authorized deferments for borrowers prior to July 1, 1993*—(1) *For all borrowers who are not new borrowers on or after July 1, 1993.* Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (b)(4) of this section, engaged in full-

time study at a school in accordance with paragraph (c) of this section;

(ii) Engaged in a course of study under an eligible graduate fellowship program in accordance with paragraph (d) of this section;

(iii) Engaged in a rehabilitation training program for disabled individuals in accordance with paragraph (e) of this section;

(iv) Temporarily totally disabled in accordance with paragraph (f) of this section, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years in accordance with paragraph (g) of this section; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years, in accordance with paragraph (h) of this section.

(2) *For all Stafford and SLS borrowers who are not new borrowers on or after July 1, 1993, and for parent PLUS loans made before August 15, 1983.* Deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces in accordance with paragraph (i) of this section, or an officer in the Commissioned Corps of the United States Public Health Service in accordance with paragraph (j) of this section, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(ii) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years, in accordance with paragraph (k) of this section;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years, in accordance with paragraph (l) of this section;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years, in accordance with paragraph (m) of this section; or

(v) Engaged in an internship or residency program, in accordance with paragraph (n) of this section, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(iv) of this section).

(3) *For new Stafford or SLS borrowers on or after July 1, 1987 but before July 1, 1993.* Deferment is authorized—

(i) In accordance with paragraph (o) of this section, if the borrower has been enrolled on at least a half-time basis at an institution of higher education during the six months preceding the beginning of the deferment, for a period of up to six months during which the borrower is—

(A)(*1*) Pregnant;

(*2*) Caring for his or her newborn child; or

(*3*) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(B) Not attending a school or gainfully employed;

(ii) During a period when the borrower is on active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years, in accordance with paragraph (p) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(iii) During a period of up to three years when the borrower is serving as a full-time teacher in a public or nonprofit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section;

(iv) During a period when the borrower is engaged in an internship or residency program, for up to two years, in accordance with paragraph (n) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(v) When a mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or reentering the work force, in accordance with paragraph (r) of this section. Full-time employment involves at least 30 hours of work a week and it is expected to last at least 3 months.

(4) *For new Stafford or SLS borrowers on or after July 1, 1987.* Deferment is authorized during periods when the borrower is engaged in at least half-time study at a school in accordance with paragraph (b) of this section.

(5) *For new parent PLUS borrowers on or after July 1, 1987 and before July 1, 1993.* Deferment is authorized during any period when a student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i) through (iii) and (b)(4) of this section.

(6) *Definition of a new borrower.* For purposes of paragraphs (b)(3), (b)(4), and (b)(5) of this section, a ''new borrower'' with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) *In-school deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan;

(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment; or

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii), (iii), or (iv) of this section and that the borrower has the option to cancel the deferment and continue paying on the loan.

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or Student Status Confirmation Report update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

(4) In the case of a FFEL borrower, the lender shall treat a certified loan application or other form certified by the school or for multiple holders of a borrower's loans, shared data from the Student Status Confirmation Report, as sufficient documentation for an in-school student deferment for any outstanding FFEL loan previously made to the borrower that is held by the lender.

(5) A borrower serving in a medical internship or residency program, except for an internship in dentistry, is prohibited from receiving or continuing a deferment on a Stafford, or a PLUS (unless based on the dependent's status) SLS, or Consolidation loan under paragraph (c) of this section.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in §682.200(b).

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of

work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification, or an equivalent as approved by the Secretary, that—

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding 6-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower's request, and may be granted for up to 6 months after that date.

(4) A lender may not grant an unemployment deferment beyond the date that is 6 months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (h)(2) of this section.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower or a borrower's representative shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii)(A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(5) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* (1) To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(i) That the borrower has agreed to serve for a term of at least one year;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's service is expected to end.

(2) The lender must grant a deferment for the borrower's full term of service in the Peace Corps, not to exceed three years.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) 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) 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; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraph (b)(3)(iv) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship

deferment under paragraph (b)(3)(iv) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental-leave deferment.* (1) To qualify for the parental-leave deferment described in paragraph (b)(3)(i) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* (1) To qualify for a targeted teacher deferment under paragraph (b)(3)(iii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q) (5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as

provided for in paragraphs (q) (5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval

an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term *school* in § 682.200(b) does not apply;

(ii) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(iii) *Secondary school* means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term ''secondary school'' includes education beyond the twelfth grade;

(iv) *Teacher* means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) *Chief State School Officer* means the highest ranking educational official for elementary and secondary education for the State;

(vi) *School year* means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) *Teacher shortage area* means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) *Full-time equivalent* means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a *pro rata* basis corresponding to the percentage of his or her working hours spent in such a position.

(r) *Working-mother deferment.* (1) To qualify for the working-mother deferment described in paragraph (b)(3)(v) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(s) *Deferments for new borrowers on or after July 1, 1993*—(1) *General.* (i) A new borrower who receives an FFEL Program loan first disbursed on or after July 1, 1993 is entitled to receive deferments under paragraphs (s)(2) through (s)(6) of this section. For purposes of paragraphs (s)(2) through (s)(6) of this section, a ''new borrower'' is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of July 1, 1993 or on the date he or she obtains a loan on or after July 1, 1993. This term also includes a borrower who obtains a Federal Consolidation Loan on or after July 1, 1993 if the borrower has no other outstanding FFEL Program loan when the Consolidation Loan was made.

(ii) As a condition for receiving a deferment, except for purposes of paragraph (s)(2) of this section, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment.

(iii) After receiving a borrower's written or verbal request, a lender may grant a deferment under paragraphs (s)(3) through (s)(6) of this section if the lender is able to confirm that the borrower has received a deferment on another FFEL loan or on a Direct Loan for the same reason and the same time period. The lender may grant the deferment based on information from the other FFEL loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(iv) A lender may rely in good faith on the information it receives under paragraph (s)(1)(iii) of this section when determining a borrower's eligibility for a deferment unless the lender, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. A lender must resolve any discrepant information before granting a deferment under paragraph (s)(1)(iii) of this section.

(v) A lender that grants a deferment under paragraph (s)(1)(iii) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL loan or to cancel the deferment and continue to make payments on the loan.

(2) *In-school deferment.* An eligible borrower is entitled to a deferment based on the borrower's at least half-time study in accordance with the rules prescribed in §682.210(c).

(3) *Graduate fellowship deferment.* An eligible borrower is entitled to a graduate fellowship deferment in accordance with the rules prescribed in §682.210(d).

(4) *Rehabilitation training program deferment.* An eligible borrower is entitled to a rehabilitation training program deferment in accordance with the rules prescribed in §682.210(e).

(5) *Unemployment deferment.* An eligible borrower is entitled to an unemployment deferment in accordance with the rules prescribed in §682.210(h) for periods that, collectively, do not exceed 3 years.

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(iv) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(i) through (s)(6)(iv) of this section.

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL loan.

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance.

(iii) Is working full-time and has a monthly income that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) Is serving as a volunteer in the Peace Corps.

(v) For an initial period of deferment granted under paragraph (s)(6)(iii) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(vi) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (s)(6)(iii) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(vii) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(viii) For purposes of paragraph (s)(6) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(t) *Military service deferments.* (1) A borrower who receives a FFEL Program loan may receive a military service deferment for such loan for any period during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraph (t)(1)(i) and (t)(1)(ii) of this section.

(3) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304 or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which member is normally assigned.

(4) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(5) Payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment are not refunded.

(6) As used in this paragraph—

(i) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(8) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

(9) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(u) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower who receives a FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled, on at least a half-time basis, in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (u)(1) of this section, ''active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (u)(2)(i) of this section or full-time National Guard duty under paragraph (u)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status, on at least a half-time basis, during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status, on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(5) To receive a post-active duty student deferment, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a post-active duty student deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(v) *In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on § 682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by § 682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.210, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. *Forbearance* means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (g) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender may grant forbearance on repayment of the loan only if the ability of both individuals to make scheduled payments has been impaired based on the same or differing conditions.

(4) Except as provided in paragraph (f)(11) of this section, if payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) Except as provided in paragraph (d)(2) of this section, a lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the

forbearance. If the borrower or endorser requests the forbearance orally and the lender and the borrower or endorser agree to the terms of the forbearance orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

(d)(1) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(2) If the forbearance is based on the borrower's or endorser's oral request and affirmation of the obligation to repay the debt—

(i) The forbearance period is limited to a period of 120 days;

(ii) Such a forbearance cannot be granted consecutively;

(iii) The lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and all other repayment options available to the borrower; and

(iv) The lender must—

(A) Send a notice to the borrower or endorser, as provided in paragraph (c) of this section, that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt, and includes information on all other repayment options available to the borrower, and

(B) Retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(3) For purposes of this section, an ''affirmation'' means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to, the borrower's or endorser's—

(i) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(ii) Oral acknowledgment and agreement to repay the debt documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or

(iii) A payment made on the loan by the borrower or endorser.

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period under §682.210, or an authorized period of forbearance;

(3) For the period beginning when the borrower entered repayment without the lender's knowledge until the first payment due date was established;

(4) For the period prior to the borrower's filing of a bankruptcy petition as provided in §682.402(f);

(5) For the periods described in §682.402(c) in regard to the borrower's total and permanent disability;

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a consumer reporting agency that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), for a period not to exceed 120 days necessary for the lender to determine the enforceability of the loan. If the lender determines that the loan does not qualify for discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(7) For a period not to exceed an additional 60 days after the lender has suspended collection activity for the initial 60-day period required pursuant to § 682.211(i)(6) and § 682.402(b)(3), when the lender receives reliable information that the borrower (or student on whose behalf a parent has borrowed a PLUS Loan) has died;

(8) For periods necessary for the Secretary or guaranty agency to determine the borrower's eligibility for discharge of the loan because of an unpaid refund, attendance at a closed school or false certification of loan eligibility, pursuant to § 682.402(d) or (e), or the borrower's or, if applicable, endorser's bankruptcy, pursuant to § 682.402(f);

(9) For a period of delinquency at the time a loan is sold or transferred, if the borrower or endorser is less than 60 days delinquent on the loan at the time of sale or transfer;

(10) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory forbearance until the next due date, which can be no later than 60 days after the period ends;

(11) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized;

(12) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization;

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency;

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan; or

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under § 682.209(a)(3). The notice specified in paragraph (f) introductory text of this section must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan; or

(16) For the periods described in § 682.215(e)(9) in regard to the income-based repayment plan.

(g) In granting a forbearance under this section, except for a forbearance under paragraph (i)(5) of this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(h) *Mandatory forbearance*—(1) *Medical or dental interns or residents.* Upon receipt of a request and sufficient supporting documentation, as described in § 682.210(n), from a borrower serving in a medical or dental internship or residency program, a lender shall grant forbearance to the borrower in yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) if the borrower has exhausted his or her eligibility for a deferment under § 682.210(n), or the borrower's promissory note does not provide for such a deferment—

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) *Borrowers who are not medical or dental interns or residents, and endorsers.* Upon receipt of a request and sufficient supporting documentation from an endorser (if applicable), or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (h)(1) of this section), a lender shall grant forbearance—

(i) In increments up to one year, for periods that collectively do not exceed three years, if—

(A) The borrower or endorser is currently obligated to make payments on Title IV loans; and

(B) The amount of those payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's or endorser's total monthly income;

(ii) In yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) for as long as a borrower—

(A) Is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

(B) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, 2174 or any other student loan repayment programs administered by the Department of Defense; or

(C) Is performing the type of service that would qualify the borrower for loan forgiveness and associated forbearance under the requirements of the teacher loan forgiveness program in §682.216; and

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in §682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases at least half-time enrollment, for a FFEL loan in repayment.

(3) *Forbearance agreement.* After the lender determines the borrower's or endorser's eligibility, and the lender and the borrower or endorser agree to the terms of the forbearance granted under this section, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file.

(4) *Documentation.* (i) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(i) of this section, the lender shall require the borrower or endorser to submit at least the following documentation:

(A) Evidence showing the amount of the most recent total monthly gross income received by the borrower or endorser from employment and from other sources; and

(B) Evidence showing the amount of the monthly payments owed by the borrower or endorser to other entities for the most recent month for the borrower's or endorser's Title IV loans.

(ii) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

(iii) Before granting a forbearance to a borrower under paragraph (h)(2)(ii)(C)

of this section, the lender must require the borrower to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and anticipated ending dates that the borrower is expected to perform, for that year, the type of service described in § 682.216(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 682.216(c).

(i) *Mandatory administrative forbearance.* (1) The lender shall grant a mandatory administrative forbearance for the periods specified in paragraph (i)(2) of this section until the lender is notified by the Secretary or a guaranty agency that the forbearance period no longer applies. The lender may not require a borrower who is eligible for a forbearance under paragraph (i)(2)(ii) of this section to submit a request or supporting documentation, but shall require a borrower (or endorser, if applicable) who requests forbearance because of a military mobilization to provide documentation showing that he or she is subject to a military mobilization as described in paragraph (i)(4) of this section.

(2) The lender is not required to notify the borrower (or endorser, if applicable) at the time the forbearance is granted, but shall grant a forbearance to a borrower or endorser during a period, and the 30 days following the period, when the lender is notified by the Secretary that—

(i) Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

(ii) The geographical area in which the borrower or endorser resides has been designated a disaster area by the president of the United States or Mexico, the Prime Minister of Canada, or by a Governor of a State.

(3) As soon as feasible, or by the date specified by the Secretary, the lender shall notify the borrower (or endorser, if applicable) that the lender has granted a forbearance and the date that payments should resume. The lender's notification shall state that the borrower or endorser—

(i) May decline the forbearance and continue to be obligated to make scheduled payments; or

(ii) Consents to making payments in accordance with the lender's notification if the forbearance is not declined.

(4) For purposes of paragraph (i)(2)(i) of this section, the term ''military mobilization'' shall mean a situation in which the Department of Defense orders members of the National Guard or Reserves to active duty under sections 688, 12301(a), 12301(g), 12302, 12304, and 12306 of title 10, United States Code. This term also includes the assignment of other members of the Armed Forces to duty stations at locations other than the locations at which they were normally assigned, only if the military mobilization involved the activation of the National Guard or Reserves.

(5) The lender shall grant a mandatory administrative forbearance to a borrower (or endorser, if applicable) during a period when the borrower (or endorser, if applicable) is making payments for a period of—

(i) Up to 3 years of payments in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term; or

(ii) Up to 5 years of payments in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in the loan not being repaid within the maximum repayment term.

(6) The lender shall grant a mandatory administrative forbearance to a borrower for a period not to exceed 60 days after the lender receives reliable information indicating that the borrower (or student in the case of a PLUS loan) has died, until the lender receives documentation of death pursuant to § 682.402(b)(3).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.211, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 81 FR 76079, Nov. 1, 2016, § 682.211 was amended by adding paragraph (i)(7), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added text was set forth as follows:

§ 682.211 Forbearance.

* * * * *

(i) * * *

(7) The lender must grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k). The mandatory administrative forbearance shall be granted in yearly increments or for a period designated by the Secretary until the loan is consolidated or until the lender is notified by the Secretary to discontinue the forbearance.

* * * * *

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

[57 FR 60323, Dec. 18, 1992, as amended at 72 FR 62002, Nov. 1, 2007; 74 FR 55664, Oct. 28, 2009]

§ 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principal balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 68 FR 75429, Dec. 31, 2003]

§ 682.214 [Reserved]

§ 682.215 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income* (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services

pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

(i) Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are held by the loan holder;

(ii) Both the borrower and the borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the loan holder determines—

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

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

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are held by the loan holder;

(iii) The calculated amount under paragraph (b)(1), (b)(1)(i), or (b)(1)(ii) of this section is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(1)(i), or (b)(1)(ii) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under the income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(iii) and (iv) of this section to loans they hold.

(3) If a borrower elects the income-based repayment plan on or after July 1, 2013, the loan holder must, unless the borrower has some loans that are eligible for repayment under the income-based repayment plan and other loans that are not eligible for repayment under that plan, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

(5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) If the borrower's monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-

based repayment plan or no longer has a partial financial hardship.

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under the income-based repayment plan is calculated on the principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The loan holder shall apply any payment made under the income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

(2) The borrower may prepay the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).

(4) If the prepayment amount exceeds the monthly payment amount of $0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder requires the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) Except as provided in paragraph (d)(2)(ii) of this section, the time remaining under the maximum 10-year repayment period and the amount of the borrower's loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 682.209(h)(2) and the total amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(3) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the FFEL standard repayment plan in accordance with paragraph (d)(2) of this section may request a change to a different repayment plan after making one monthly payment under the FFEL standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for temporarily accepting smaller payments than previously scheduled, in accordance with § 682.211(a)(1).

(e) *Eligibility documentation, verification, and notifications.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i) Provide documentation, acceptable to the loan holder, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not

reasonably reflect the borrower's current income, provide other documentation to verify income;

(iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans—

(A) Ensure that the borrower's spouse has provided consent for the loan holder to obtain information about the spouse's eligible loans from the National Student Loan Data System; or

(B) Provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information; and

(iv) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iv) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the loan holder recalculates the borrower's monthly payment amount based on the borrower's request, the loan holder must send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification must provide the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the loan holder must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the loan holder does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(5) of this section.

(4) Each time a loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid accrued interest will be capitalized in accordance with paragraph (b)(5) of this section; and

(iii) Information about the borrower's option to request, at any time, that the loan holder redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the loan holder determines that the borrower again has a partial financial hardship, the loan holder must recalculate the borrower's monthly payment in accordance with paragraph (b)(1) of this section and send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the loan holder must send the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section, or if the loan holder determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The loan holder designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the loan holder does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline, unless the loan holder is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(8) If the loan holder receives the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline—

(i) The loan holder must promptly determine the borrower's new monthly payment amount.

(ii) If the loan holder does not determine the new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must prevent the borrower's monthly payment amount from being recalculated in accordance with paragraph (d)(1) of this section and maintain the borrower's current scheduled monthly payment amount until the loan holder determines the new monthly payment amount.

(A) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. Notwithstanding the requirements of § 682.209(b)(2)(ii), unless the borrower requests otherwise the loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(1) of this section.

(B) If the new monthly payment amount is equal to or greater than the borrower's previously calculated income-based monthly payment amount, the loan holder does not make any adjustments to the borrower's account.

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

(9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph

(d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) of this section, including a monthly payment amount of $0.00, as provided in paragraph (b)(1)(iii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) with a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly amount of $0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has an eligible FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in paragraph (f)(1) of this section.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(5) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) The loan holder determines when a borrower has met the

loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness. No later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, the loan holder must send the borrower a written notice that includes—

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

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

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

(2) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness, the loan holder must request payment from the guaranty agency.

(3) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(2) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(4)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(4)(i) of this section, pay the holder the amount of the forgiveness.

(5) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days—

(i) Inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans is satisfied; and

(ii) Provide the borrower with the information described in paragraph (g)(1)(iii) of this section.

(6)(i) The holder must apply the payment from the guaranty agency under paragraph (g)(4)(ii) of this section to satisfy the outstanding balance on those loans subject to income-based forgiveness; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(7) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(8) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

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(Authority: 20 U.S.C. 1098e)

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§ 682.216 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases,

Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching for an educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or for an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Highly qualified means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower who has been employed at an elementary or secondary school or for an educational service agency as a full-time teacher for five consecutive complete

academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

(3) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(4) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or educational service agency where the borrower was employed; or

(B) Taught in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency where the borrower was employed.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science to secondary school students on a full-time basis for an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or an educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed for an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(5) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower taught full time at an eligible elementary or secondary school or for an educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students for an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or for an educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities

and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed for an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(6) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(7) For teacher loan forgiveness applications received by the loan holder on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(8) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(9) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(7) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(10) A borrower who was employed as a teacher at more than one qualifying school, for more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(11) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 682.200.

(12) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's subsidized or unsubsidized Federal Stafford or Federal Consolidation Loan obligation that is

outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 685.217.

(3) The holder does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) *Authorized forbearance during qualifying teaching service and forgiveness processing.* (1) A holder grants a forbearance—

(i) Under §682.211(h)(2)(ii)(C) and (h)(4)(iii), in annual increments for each of the years of qualifying teaching service, if the holder believes, at the time of the borrower's annual request, that the expected cancellation amount will satisfy the anticipated remaining outstanding balance on the loan at the time of the expected cancellation;

(ii) For a period not to exceed 60 days while the holder is awaiting a completed teacher loan forgiveness application from the borrower; and

(iii) For the period beginning on the date the holder receives a completed loan forgiveness application to the date the holder receives either a denial of the request or the loan forgiveness amount from the guaranty agency, in accordance with paragraph (f) of this section.

(2) At the conclusion of a forbearance authorized under paragraph (e)(1) of this section, the holder must resume collection activities and may capitalize any interest accrued and not paid during the forbearance period in accordance with §682.202(b).

(3) Nothing in paragraph (e) of this section restricts holders from offering other forbearance options to borrowers who do not meet the requirements of paragraph (e)(1)(i) of this section.

(f) *Application and processing.* (1) A borrower, after completing the qualifying teaching service, requests loan forgiveness from the holder of the loan on a form approved by the Secretary.

(2)(i) The holder must file a request for payment with the guaranty agency on a teacher loan forgiveness amount no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(ii) When filing a request for payment on a teacher loan forgiveness, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

(iii) If the holder files a request for payment later than 60 days after the receipt of the completed teacher loan forgiveness application form, interest that accrued on the loan forgiveness amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the loan forgiveness amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination of the borrower's eligibility for loan forgiveness under this section.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period, pay the holder the amount of the laon forgiveness, up to $17,500, subject to paragraphs (c)(11), (d)(1), (d)(2) and (f)(2)(iii) of this section.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for the loan forgiveness, the holder must, within 30 days, inform the borrower of the determination. If the loan forgiveness is approved, the holder must also provide

the borrower with information regarding any new repayment terms of remaining loan balances.

(5) Unless otherwise instructed by the borrower, the holder must apply the proceeds of the teacher forgiveness first to any outstanding unsubsidized Federal Stafford loan balances, next to any outstanding subsidized Federal Stafford loan balances, then to any eligible outstanding Federal Consolidation loan balances.

(g) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* In the case of a teacher loan forgiveness applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount forgiven that is equal to the complement of the reinsurance percentage paid on the loan. The payment of up to $5,000, or up to $17,500, may also include interest that accrues on the forgiveness amount during the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the guaranty agency determines that the borrower is eligible for the teacher loan forgiveness.

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(Authority: 20 U.S.C. 1078–10)

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Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period;

(iii) During the repayment period for loans described in paragraph (d)(2) of this section; and

(iv) During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) The date the disbursement check is returned uncashed to the lender, or the 120th day after the date of that disbursement if—

(A) The check for the disbursement has not been cashed on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer or master check have not been released from the account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled;

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(viii) The date the lender determines that the borrower is eligible for loan discharge under § 682.402(d), (e), or (l);

(ix) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3); or

(x) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying portion of the borrower's Consolidation Loan.

(3) Section 682.412 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty agency.

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guaranty agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to 3 percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25746, May 17, 1994; 59 FR 33352, June 28, 1994; 59 FR 61428, Nov. 30, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58959, Nov. 1, 1999; 66 FR 34763, June 29, 2001; 71 FR 45703, Aug. 9, 2006; 72 FR 62002, Nov. 1, 2007; 73 FR 63252, Oct. 23, 2008; 78 FR 65813, Nov. 1, 2013]

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) *General.* (1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 if the loan consolidates only subsidized Stafford loans; and

(iii) On or after November 13, 1997, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to § 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 59 FR 33352, June 28, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58959, Nov. 1, 1999; 78 FR 65813, Nov. 1, 2013]

§ 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also

paid on the unpaid accrued interest of a loan covered by § 682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2), (b)(3), or (e)(1) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or on or after January 1, 2000 for any period prior to April 1, 2006, or under § 682.209(e) or (f), no special allowance is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992;

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992; or

(iv) 9 percent in the case of a Federal PLUS loan made on or after July 1, 1998.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992 and prior to July 1, 2010, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

(c) *Rate.* (1) Except as provided in paragraph (c)(2), (c)(3), or (e) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of—

(A) The quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period for a loan for which the first disbursement is made on or after January 1, 2000; or

(B) The 91-day Treasury bills auctioned during the 3-month period for a loan for which the first disbursement is made prior to January 1, 2000;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A)(*1*) 2.34 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000;

(*2*) 2.64 percent to the resulting percentage for a Federal PLUS loan for which the first disbursement is made on or after January 1, 2000;

(*3*) 2.64 percent to the resulting percentage for a Federal Consolidation Loan that was made based on an application received by the lender on or after January 1, 2000;

(*4*) 1.74 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000 during the borrower's in-school, grace, and authorized period of deferment;

(*5*) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000;

(*6*) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000, during the borrower's in-school, grace, and authorized period of deferment;

(*7*) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for interest that accrues

during the borrower's in-school, grace, and authorized period of deferment;

(B) 3.1 percent to the resulting percentage for—

(*1*) A Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, except as provided in paragraph (c)(1)(iii)(A)(*7*) of this section;

(*2*) A Federal SLS Loan made on or after October 1, 1992;

(*3*) A Federal PLUS Loan made on or after October 1, 1992 and prior to July 1, 1998;

(*4*) A Federal PLUS Loan made on or after July 1, 1998 and prior to October 1, 1998, except that no special allowance shall be paid any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(*5*) A Federal PLUS loan made on or after October 1, 1998 and prior to January 1, 2000, except that no special allowance shall be paid during any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(*6*) A Federal Consolidation Loan for which the application was received by the lender prior to January 1, 2000, except that no special allowance shall be paid during any quarter on a loan for which the application was received on or after October 1, 1998 unless the average of the bond equivalent rate of the 91-day Treasury bills auctioned during that quarter, plus 3.1 percent, exceeds the rate determined under Section 682.202(a)(4)(iv);

(C) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but prior to October 1, 1992;

(D) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(E) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(F) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(E) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraphs (c)(3)(iii), (c)(3)(iv), and (e) of this section, the special allowance rate is that provided in paragraph (c)(3)(ii) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate for a loan described in paragraph (c)(3)(i) is one-half of the rate calculated under paragraph (c)(1) of this section, except that in applying paragraph (c)(1)(iii), 3.5 percent is substituted for the percentages specified therein.

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(iv) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9.5 percent minus the applicable interest rate.

(4) Loans made or purchased with funds obtained by the holder from the issuance of tax-exempt obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(iii) or (iv) of this section, and are not subject to the 50 percent limitation on the maximum rate otherwise applicable to loans made with tax-exempt funds.

(5) For purposes of paragraphs (c)(3) and (c)(4), a loan is purchased with funds described in those paragraphs when the loan is refinanced in consideration of those funds.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, on or before the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer or master check have not been released from the restricted account maintained by the school on or before that date;

(vii) The 30th day after the date the lender received a returned claim from the guaranty agency on a loan submitted by the deadline specified in (d)(1)(v) of this section for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day; or

(viii) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

(2) In the case of a loan disbursed on or after October 1, 1992 and prior to July 1, 2010, the Secretary does not pay special allowance on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the account maintained by the school before that date.

(3) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Limits on special allowance payments on loans made or purchased with funds derived from tax-exempt obligations*—(1) *General.* (i) The Secretary pays a special allowance on a loan described in paragraph (c)(3) or (c)(4) of this section that is held by or on behalf of an Authority only if the loan meets

the requirements of section 438(e) of the Act.

(ii) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(1) or (c)(3) of this section on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority in accordance with paragraphs (e)(2) through (e)(5) of this section, as applicable. References to ''loan'' or ''loans'' in paragraphs (e)(2) through (e)(5) include only loans described in paragraph (c)(3)(i).

(2) *Effect of Refinancing on Special Allowance Payments.* Except as provided in paragraphs (e)(3) through (e)(5) of this section—

(i) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(3) of this section to an Authority that holds a legal or equitable interest in the loan that is pledged or otherwise transferred in consideration of—

(A) Funds listed in paragraph (c)(3)(i) of this section;

(B) Proceeds of a tax-exempt refunding obligation that refinances a debt that—

(*1*) Was first incurred pursuant to a tax-exempt obligation originally issued prior to October 1, 1993;

(*2*) Has been financed continuously by tax-exempt obligation.

(ii) The Secretary pays a special allowance to an Authority that holds a legal or equitable interest in the loan that is pledged or otherwise transferred in consideration of funds other than those specified in paragraph (e)(2)(i) of this section either—

(A) At the rate prescribed in paragraph (c)(1) of this section, if__

(*1*) The prior tax-exempt obligation is retired; or

(*2*) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bears a yield that does not exceed the yield restrictions of section 148 of the Internal Revenue Code and the regulations thereunder, or

(B) At the rate prescribed in paragraph (c)(3) of this section.

(3) *Loans affected by transactions or events after September 30, 2004.* The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section if, after September 30, 2004—

(i) The loan is refinanced with funds other than those listed in paragraph (e)(2)(i) of this section;

(ii) The loan is sold or transferred to any other holder; or

(iii)(A) The loan is financed by a tax-exempt obligation included in the sources in paragraph (e)(2)(i), and

(B) That obligation matures, is refunded, is defeased, or is retired, whichever occurs earliest.

(4) *Loans Affected by Transactions After February 7, 2006.* Except as provided in paragraph (e)(5) or (f) of this section, the Secretary pays a special allowance at the rate prescribed in paragraph (c)(1) of this section on any loan—

(i) That was made or purchased on or after February 8, 2006, or

(ii) That was not earning, on February 8, 2006, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(5) *Loans affected by transactions after December 30, 2010.* (i) The Secretary pays a special allowance to a holder described in paragraph (e)(5)(ii) of this section at the rate prescribed in paragraph (c)(3) of this section only on a loan—

(A) That was made or purchased prior to December 31, 2010, or

(B) That was earning, before December 31, 2010, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(ii) A holder for purposes of this paragraph is an entity that—

(A) On February 8, 2006 and during the quarter for which special allowance is determined under this paragraph—

(*1*) Is a unit of State or local government or a private nonprofit entity, and

(*2*) Is not owned or controlled by, or under common ownership or control by, a for-profit entity; and

(B) In the most recent quarterly special allowance payment prior to September 30, 2005, held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal of $100,000,000 or less for which special allowance was determined and paid under paragraph (c)(3) of this section.

(f) *Special allowance rates for loans made on or after October 1, 2007.* With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, other than a loan described in paragraph (e)(5) of this section, the special allowance rate for an eligible loan made during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.

(1) Except as provided in paragraph (f)(2) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.79 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.19 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.79 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.09 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(2) For loans held by an eligible not-for-profit holder as defined in paragraph (f)(3) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.94 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.34 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.94 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.24 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(3) *Eligible Not-for-Profit Holder.* (i) For purposes of this section, the term ''eligible not-for-profit holder'' means an eligible lender under section 435(d) of the Act (except an eligible institution) that requests special allowance payments from the Secretary and that is—

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103–1, or section 144(b) of the Internal Revenue Code of 1986;

(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;

(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(D) A trustee acting as an eligible lender on behalf of an entity that is not an eligible institution and that is a State or non-profit entity or a special purpose entity for a State or non-profit entity.

(ii) For purposes of paragraph (f)(3) of this section—

(A) The term ''State or non-profit entity'' means an entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of that Act.

(B) The term ''special purpose entity'' means an entity established for the limited purpose of financing the acquisition of loans from or at the direction of a State or non-profit entity, or servicing and collecting such loans, and that is—

(*1*) An entity established by such State or non-profit entity, or

(*2*) An entity established by an entity described in paragraph (f)(3)(ii)(B)(1) of this section.

(C) A special purpose entity is a ''related special purpose entity'' with respect to a State or non-profit entity if it holds any interest in loans acquired from or at the direction of that State or non-profit entity or from a special purpose entity established by that State or non-profit entity.

(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such entity—

(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and on or before September 27, 2007 had made or acquired a FFEL loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or

(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.

(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.

(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity or its related special purpose entity, shall not be an eligible not-for-profit holder if the State or non-profit entity or its related special purpose entity is owned or controlled, in whole or in part, by a for-profit entity. For purposes of this paragraph, a for-profit entity has ownership and control of a State or non-profit entity, or its related special purpose entity, if—

(A) The for-profit entity is a member or shareholder of a State or non-profit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity or its special purpose entity;

(B) The for-profit-entity employs or appoints individuals that together constitute a majority of the State, non-profit, or special purpose entity's board of trustees or directors, or a majority of such board's audit committee, executive committee, or compensation committee; or

(C) For a State, non-profit, or special purpose entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in § 600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) ''Beneficial owner'' (including ''beneficial ownership'' and ''owner of a beneficial interest'') means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from

the loan, subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) ''Sole owner'' means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vii)(A) No State or non-profit entity, and no trustee to the extent acting on behalf of such a State or non-profit entity or its related special purpose entity, shall be an eligible not-for-profit holder with respect to any loan or income from any loan on which payment is claimed at the rate established under paragraph (f)(2) of this section, unless such State or non-profit entity or its related special purpose entity is the sole owner of the beneficial interest in such loan and the income from such loan.

(B) A State or non-profit entity that had sole ownership of the beneficial interest in a loan and the income from such loan is considered to retain that sole ownership for purposes of paragraph (f)(3)(vii)(A) of this section if such entity transferred beneficial interest in the loan to its related special purpose entity and no party other than that State or non-profit entity or its related special purpose entity owns any beneficial interest or residual ownership interest in the loan or income from the loan.

(viii)(A) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of a State or non-profit entity or its related special purpose entity in excess of reasonable and customary fees paid for providing the particular service or services that the trustee undertakes to provide to such entity.

(B) Fees are reasonable and customary for purposes of paragraph (f)(3)(viii) of this section, if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the State or non-profit entity that the Secretary considers reliable.

(C) Loans owned by the State or non-profit entity or a related special purpose entity for which the trustee receives fees in excess of the amount permitted by paragraph (f)(3)(viii) of this section cease to qualify for a special allowance payment at the rate prescribed under paragraph (f)(2) of this section.

(ix) For purposes of paragraph (f)(3) of this section, if a State or non-profit entity, its related special purpose entity, or a trustee acting on behalf of any of these entities, grants a security interest in, or otherwise pledges as collateral, a loan, or the income from a loan, to secure a debt obligation for which such State or non-profit entity, or its related special purpose entity, is the issuer of that debt obligation, none of these entities shall, by such action—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan.

(x) *Not-for-Profit Holder Eligibility Determination.* A State or non-profit entity that seeks to qualify as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(*1*) States the basis upon which the entity qualifies as a State or non-profit entity;

(*2*) Includes documentation establishing its status as a State or non-profit entity;

(*3*) Includes the name and lender identification number(s) of the entities for which designation is being certified;

(*4*) Includes the name of any related special purpose entities that hold any interest in any loan on which special allowance is claimed under paragraph (f)(2)of this section, describes the role of such entity with respect to the loans, and provides with respect to that entity the certifications and documentation described in paragraph (f)(3)(x)(A) and (B) of this section; and

(*5*) For an entity establishing status under section 150(d) of the Internal Revenue Code of 1986, includes copies of the requests of the State or political subdivision or subdivisions thereof or requirements described in section 150(d)(2) of the Internal Revenue Code and the CEO's additional certification that the entity has not elected under section 150(d)(3) of the Internal Revenue Code to cease its status as a qualified scholarship funding corporation.

(B) A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, with supporting documentation that shows that the State or non-profit entity—

(*1*) Is constituted a State entity by operation of specific State law;

(*2*) Has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d) of the Internal Revenue Code, has not made the election described under section 150(d)(3) of the Internal Revenue Code, and is incorporated under State law as a not-for-profit organization;

(*3*) Is incorporated under State law as a not-for-profit organization or is an entity described in section 501(c)(3) of the Internal Revenue Code; or

(*4*) Has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

(xi) *Annual Certification by Eligible Not-for-Profit Holder.* A State or non-profit entity that seeks to retain its eligibility as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must annually provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(*1*) Includes the name and lender identification number(s) of the entities for which designation is being recertified;

(*2*) States that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and

(*3*) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, and that of any related special purpose entity that holds an interest in loans on which it seeks to claim special allowance at the rate provided under paragraph (f)(2) of this section, at the same time these returns are filed with the Internal Revenue Service.

(xii) *Not-for-Profit Holder Change of Status.* Within 10 business days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary's determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary's determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change to the date of the Secretary's determination equal

to the difference between special allowance at the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

(4) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

(g) For purposes of this section—

(1) A tax-exempt obligation is an obligation the income of which is exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C.);

(2) The date on which an obligation is considered to be ''originally issued'' is determined under § 682.302(f)(2)(i) or (ii), as applicable.

(i) An obligation issued to obtain funds to make loans, or to purchase a legal or equitable interest in loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date issued.

(ii) A tax-exempt obligation that refunds, or is one of a series of tax-exempt refundings with respect to a tax-exempt obligation described in § 682.302(f)(2)(i), is considered to be originally issued on the date on which the obligation described in § 682.302(f)(2)(i) was issued.

(3) A loan is refinanced when an Authority that has pledged the loan as collateral for an obligation of that Authority retains an interest in the loan, but causes the loan to be released from the lien of that obligation and pledged as collateral for a different obligation of that Authority.

(4) References to an Authority include a successor entity that may not qualify as an Authority under § 682.200(b).

(h) *Calculation of special allowance payments for loans subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25746, May 17, 1994; 59 FR 33353, June 28, 1994; 59 FR 61428, Nov. 30, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58626, Oct. 29, 1999; 66 FR 34763, June 29, 2001; 68 FR 75429, Dec. 31, 2003; 71 FR 45703, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 72 FR 62002, Nov. 1, 2007; 73 FR 63252, Oct. 23, 2008; 74 FR 55996, Oct. 29, 2009; 78 FR 65813, Nov. 1, 2013]

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) To compute the average daily balance of unpaid accrued interest for purposes of special allowance on loans covered by § 682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at the applicable interest rate.

(3) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraphs (d)(1) and (2) of this section.

(Authority: 20 U.S.C. 1082, 1087–1)

[57 FR 60323, Dec. 18, 1992, as amended at 73 FR 63254, Oct. 23, 2008]

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

(a) *General.* (1) If a lender owes origination fees or loan fees under paragraph (a) of this section, it must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary, even if the lender is not owed, or does not wish to receive, interest benefits or special allowance from the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3)(i)(A) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by—

(*1*) The amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount; and

(*2*) The amount of lender fees payable under paragraph (a)(3)(ii) of this section; and

(*3*) The amount of excess interest, as calculated in accordance with paragraph (d) of this section.

(B) The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(ii)(A) For any FFEL loan made on or after October 1, 1993, a lender shall pay the Secretary a loan fee equal to 0.50% of the principal amount of the loan.

(B) For any FFEL loan made on or after October 1, 2007 and prior to July 1, 2010, a lender shall pay the Secretary a loan fee equal to 1.0 percent of the principal amount of the loan.

(iii) The Secretary collects from an originating lender the amount of origination fees the originating lender was authorized to collect from borrowers

during the quarter whether or not the originating lender actually collected those fees. The Secretary also collects the fees the originating lender is required to pay under paragraph (a)(3)(ii) of this section. Generally, the Secretary collects the fees from the originating lender by offsetting the amount of interest benefits and special allowance payable to the originating lender in a quarter, and, if necessary, the amount of interest benefits and special allowance payable in subsequent quarters may be offset until the total amount of fees has been recovered.

(iv) If the full amount of the fees cannot be collected within two quarters by reducing interest and special allowance payable to the originating lender, the Secretary may collect the unpaid amount directly from the originating lender.

(v) If the full amount of the fees cannot be collected within two quarters from the originating lender in accordance with paragraphs (a)(3)(iii) and (iv) of this section and if the originating lender has transferred the loan to a subsequent holder, the Secretary may, following written notice, collect the unpaid amount from the holder by using the same steps described in paragraphs (a)(3)(iii) and (iv) of this section, with the term ''holder'' substituting for the term ''originating lender''.

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by—

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal Government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under §§ 682.300 through 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1)(i) A lender holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Government Auditing Standards.* Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit; and

(v) A lender must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[1]

(3) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(d) *Recovery of excess interest paid by the Secretary.* (1) For any loan for which the first disbursement of principal is made on or after April 1, 2006, the Secretary collects the amount of excess interest paid to a lender on a quarterly basis when the applicable interest rate on a loan for each quarter exceeds the special allowance support level in paragraph (d)(2) of this section for the loan. Excess interest is calculated and recovered each quarter by subtracting the special allowance support level from the applicable interest rate, multiplying the result by the average daily principal balance of the loan (not including unearned interest added to principal) during the quarter, and dividing by four.

(2) The term *special allowance support level* means a number expressed as a percentage equal to the sum of—

(i) The average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

[1] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

(ii) 2.34 percent for a Federal Stafford loan in repayment;

(iii) 1.74 percent for a Federal Stafford loan during the in-school, grace, and deferment periods; or

(iv) 2.64 percent for a Federal PLUS or Consolidation Loan.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 61428, Nov. 30, 1994; 60 FR 31411, June 15, 1995; 64 FR 18978, Apr. 16, 1999; 64 FR 58627, Oct. 29, 1999; 71 FR 45705, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 72 FR 62003, Nov. 1, 2007; 74 FR 55996, Oct. 29, 2009; 78 FR 65814, Nov. 1, 2013; 79 FR 76105, Dec. 19, 2014]

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

§ 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the FFEL programs and to receive the various payments and benefits related to that participation.

(b) There are four agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford or Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf under § 682.301; and

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, bankruptcy, closed school and false certification discharge claims paid by the Secretary through the guaranty agency.

(2) *Federal advances for claim payments agreement.* A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087–1)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 33353, June 28, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58627, Oct. 29, 1999; 78 FR 65814, Nov. 1, 2013]

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Reinstatement of borrower eligibility.* Except as provided in § 668.35(b) for a borrower with a defaulted loan on which a judgment has been obtained and § 668.35(i) for a borrower who fraudulently obtained title IV, HEA program assistance, reinstatement of Title IV eligibility for a borrower with a defaulted loan must be in accordance with this paragraph (b)(1). For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(*1*) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to those terms.

(iv) A guaranty agency must provide the borrower with written information regarding the possibility of loan rehabilitation if the borrower makes three additional reasonable and affordable monthly payments after making payments to regain eligibility for Title IV assistance and the consequences of loan rehabilitation.

(v) A guaranty agency must inform the borrower that he or she may only obtain reinstatement of borrower eligibility under this section once.

(2) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(3) *Insurance premiums and Federal default fees.* (i) Except for a Consolidation Loan or refinanced SLS or PLUS loans, a guaranty agency:

(A) May charge the lender an insurance premium for Stafford, SLS, or PLUS loans it guarantees prior to July 1, 2006; and

(B) Must collect, either from the lender or by payment from any other non-Federal source, a Federal default fee for any Stafford or PLUS loans it guarantees on or after July 1, 2006, to be deposited into the Federal Fund under § 682.419.

(ii) The guaranty agency may not use the Federal default fee for incentive payments to lenders, and may only use the insurance premium or the Federal default fee for costs incurred in guaranteeing loans or in the administration of the agency's loan guarantee program, as specified in § 682.410(a)(2) or § 682.419(c).

(iii) If a lender charges the borrower an insurance premium or Federal default fee, the lender must deduct the charge proportionately from each disbursement of the borrower's loan proceeds.

(iv) The amount of the insurance premium or Federal default fee, as applicable—

(A) May not exceed 3 percent of the principal balance for a loan disbursed on or before June 30, 1994;

(B) May not exceed 1 percent of the principal balance for a loan disbursed on or after July 1, 1994;

(C) Shall be 1 percent of the principal balance of a loan guaranteed on or after July 1, 2006 and prior to July 1, 2010.

(v) If the circumstances specified in paragraph (vi) exist, the guaranty agency shall refund to the lender any insurance premium or Federal default fee paid by the lender.

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance the insurance premium or Federal default fee paid by the borrower on a loan under the following circumstances:

(A) The insurance premium or Federal default fee attributable to each disbursement of a loan must be refunded if the loan check is returned uncashed to the lender.

(B) The insurance premium or Federal default fee, or an appropriate prorated amount of the premium or fee, must be refunded by application to the borrower's loan balance if—

(*1*) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(*2*) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless—

(*i*) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(*ii*) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(*3*) Within 120 days of disbursement, the loan check has not been negotiated; or

(*4*) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check have not been released from the restricted account maintained by the school.

(4) *Inquiries.* The agency must be able to receive and respond to written, electronic, and telephone inquiries.

(5) *Guaranty liability.* The guaranty agency shall guarantee—

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993;

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993 and before July 1, 2006; and

(iii) Not more than 97 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after July 1, 2006.

(6) *Guaranty agency verification of default data.* A guaranty agency must meet the requirements and deadlines provided for it in subpart M and N of 34 CFR part 668 for the cohort default rate process.

(7) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, ''supervision'' includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(8) *Loan assignment.* (i) Except as provided in paragraph (b)(8)(iii) of this section, the guaranty agency must allow a

loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closed or a false certification claim;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, ''assigned'' means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(8)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

(9) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(10) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of ''eligible lender'' in section 435(d) of the Act and have a written lender agreement with the agency;

(B) Lender participation in its program;

(C) Limitation, suspension, termination of lender participation;

(D) Emergency action against a participating lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, bankruptcy, closed school, false certification unpaid refunds, identity theft, and ineligible loan claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D, and F of this part.

(11) *Monitoring student enrollment.* The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current holder of the loan within 35 days of any change in the student's enrollment status reported that triggers—

(i) The beginning of the borrower's grace period; or

(ii) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(12) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(14) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and

SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(14)(i) of this section must be paid by the guaranty agency making the request.

(15) *Information on defaults.* The guaranty agency shall, upon the request of a school, furnish information with respect to students, including the names and addresses of such students, who were enrolled at that school and who are in default on the repayment of any loan guaranteed by that agency.

(16) *Information on loan sales or transfers.* The guaranty agency must, upon the request of a school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including—

(i) Notice of assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee or, if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

(17) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

(18) *Consolidation of defaulted FFEL loans.* (i) A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is paid off by a Direct Consolidation loan.

(ii) On or after October 1, 2006, when returning proceeds to the Secretary from the consolidation of a defaulted loan, a guaranty agency that charged the borrower collection costs must remit an amount that equals the lesser of the actual collection costs charged or 8.5 percent of the outstanding principal and interest of the loan.

(iii) On or after October 1, 2009, when returning proceeds to the Secretary from the consolidation of a defaulted loan that is paid off with excess consolidation proceeds as defined in paragraph (b)(18)(iv) of this section, a guaranty agency must remit the entire amount of collection costs repaid through the consolidation loan.

(iv) The term *excess consolidation proceeds* means, for any Federal fiscal year beginning on or after October 1, 2009, the amount of Consolidation Loan proceeds received for defaulted loans under the FFEL Program that exceed 45 percent of the agency's total collections on defaulted loans in that Federal fiscal year.

(19) *Change in agency's records system.* The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notification described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

(20) *Plans to Reduce Consolidation of defaulted loans.* A guaranty agency shall establish and submit to the Secretary for approval, procedures to ensure that consolidation loans are not an excessive proportion of the guaranty agency's recoveries on defaulted loans.

(c) *Review of forms and procedures.* (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures

and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (c)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary. Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in § 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(d) *College Access Initiative.* (1) A guaranty agency shall establish a plan to promote access to postsecondary education by—

(i) Providing the Secretary and the public with information on Internet web links and a comprehensive listing of postsecondary education opportunities, programs, publications and other services available in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(ii) Promoting and publicizing information for students and traditionally underrepresented populations on college planning, career preparation, and paying for college in coordination with other entities that provide or distribute such information in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(2) The activities required by this section may be funded from the guaranty agency's Operating Fund in accordance with § 682.423(c)(1)(vii) or from funds remaining in restricted accounts established pursuant to section 422(h)(4) of the Act.

(3) The guaranty agency shall ensure that the information required by this subsection is available to the public by November 5, 2006 and is—

(i) Free of charge; and

(ii) Available in print.

(e)(1) A guaranty agency must work with schools that participated in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(2) The materials and programs described in paragraph (e)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (e)(1) and (2) of this section.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.401, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a

school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower's loans that would have been eligible for discharge.

(3) If a PLUS loan was obtained by two parents as co-makers, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(4) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) or (iii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(5) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with consumer reporting agency reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(5) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) *Death.* (1) If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2)(i) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on—

(A) An original or certified copy of the death certificate;

(B) An accurate and complete photocopy of the original or certified copy of the death certificate;

(C) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(D) Verification of the borrower's or student's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(ii) Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation of the borrower's or student's death.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower and any endorser for up to 60 days and promptly request the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death

certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

(c)(1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (c)(8) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(9) of this section.

(iv) For purposes of this paragraph (c)—

(A) A borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary;

(B) References to ''the lender'' mean the guaranty agency if the guaranty agency is the holder of the loan at the time the borrower applies for a total and permanent disability discharge, except that the total and permanent disability discharge claim filing requirements applicable to a lender do not apply to the guaranty agency; and

(C) References to ''the applicable guaranty agency'' mean the guaranty agency that guarantees the loan.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).* (i) If the borrower notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time;

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans, and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b); or

(B) An SSA notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans, that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician certified the borrower's application; or

(B) As of the date the Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's

review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician certified the borrower's loan discharge application or received the SSA notice of award for SSDI or SSI benefits to the person who made the payment.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the physician's certification or SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the Secretary's receipt of the SSA notice of award for SSDI or SSI benefits until the date the Secretary

grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(6)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment, on a form approved by the Secretary; or

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(8) *Lender and guaranty agency actions.* (i) If the Secretary approves the

borrower's total and permanent disability discharge application—

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician certified the borrower's loan discharge application or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

(9) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b)*—(i) *General.* If a veteran notifies the lender that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the veteran for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(9)(ii)(C) of this section will end after 120 days and the lender will resume collection on the loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The veteran must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(9)(iv) and (c)(9)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans, that the Secretary has received a total and permanent disability discharge application from the veteran. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(9)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the veteran's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the veteran's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(x) After making a determination that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the veteran's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each lender to submit a disability claim to the guaranty agency.

(xi) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) An explanation that the lender will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with procedures described in paragraphs (c)(2) through (c)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(xii)(A) If the Secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs the lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section.

(B) If the claim meets the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim and discharge the loan.

(C) The Secretary reimburses the guaranty agency for a disability claim

after the agency pays the claim to the lender.

(D) Upon receipt of the claim payment from the guaranty agency, the lender returns any payments received by the lender on or after the effective date of the determination by the Department of Veterans Affairs to the person who made the payments.

(E) If the Secretary does not approve the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(d) *Closed school*—(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 120 days prior to the date the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) The term ''borrower'' includes all endorsers on a loan; and

(C) A ''school'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (d) of this section relieves the borrower of an existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

(i) Whether the student has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with § 682.605(c), or the student withdrew from the school not more than 120 days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (d)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (d) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (d) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities*—(i) *Procedures applicable if a school closed on or after January 1, 1986, but prior to*

June 13, 1994. (A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's ''Closed School Policy'' as authorized by section IV of Bulletin 89–G–159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 120 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 120 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(*1*) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(*2*) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 120 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the

reasons for it within 30 days after the date the agency—

(*1*) Made that determination based on information available to the guaranty agency;

(*2*) Was notified by the Secretary that the school had not closed;

(*3*) Was notified by the Secretary that the school had closed on a date that was more than 120 days after the borrower (or student) withdrew from the school;

(*4*) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(*5*) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(ii) *Procedures applicable if a school closed on or after June 13, 1994.* (A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 120 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(*1*) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(*2*) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 120 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(ii)(B)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the

borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency—

(*1*) Made that determination based on information available to the guaranty agency;

(*2*) Was notified by the Secretary that the school had not closed;

(*3*) Was notified by the Secretary that the school had closed on a date that was more than 120 days after the borrower (or student) withdrew from the school;

(*4*) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(*5*) Received the borrower's completed application and sworn statement.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and shall take the following actions—

(*1*) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with § 682.402(h) not later than 90 days after the agency received the claim; or

(*2*) If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The lender or guaranty agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(I) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(7) *Lender responsibilities.* (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments).

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in

accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all consumer reporting agencies to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(8) *Discharge without an application.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.214 under the William D. Ford Federal Direct Loan Program; or

(ii) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

(e) *False certification by a school of a student's eligibility to borrow and unauthorized disbursements*—(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term ''borrower'' includes all endorsers on a loan. A student's or other individual's eligibility to borrow shall be considered to have been falsely certified by the school if the school—

(A) Certified the student's eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(C) Certified the eligibility of an individual for an FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in § 682.402(e)(14).

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to

the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iii) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower—

(A) The Secretary does not pay reinsurance, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as provided in paragraphs (e)(8)(ii)(B)(4) and (e)(10)(ii)(D) of this section.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse or inaccurate credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(15) of this section, to qualify for a discharge of a loan under paragraph (e) of this section, the borrower must submit to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower must—

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on defective testing of the student's ability to benefit, state that the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school; and

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section;

(iii) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note—

(A) State that the signature on either of those documents was not the signature of the borrower; and

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature;

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature; and

(C) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(v) In the case of an individual who is requesting a discharge of a loan because the individual's eligibility was falsely certified as a result of a crime of identity theft committed against the individual—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft by a perpetrator named in the verdict or judgment;

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime, provide—

(*1*) Authentic specimens of the signature of the individual, as provided in paragraph (e)(3)(iii)(B), or other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(*2*) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(vi) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(vii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities—general.* (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) Upon receipt of a discharge claim filed by a lender or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

(v) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender, the Secretary or the guaranty agency.

(7) *Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(7) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(7)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(7)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(7)(iii)(B)(*1*) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(7)(iii)(B) of this section.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan

amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(*3*) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(*4*) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iv)(B)(*1*) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iv)(B) of this section.

(9) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(9) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(10)(ii)(D)(*2*) of this section, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days—

(*1*) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(*2*) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(ii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(ii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(9)(iii) through (v) if the agency determines that the borrower does not qualify for a discharge.

(11) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(7)(iii)(B)(*2*), (e)(8)(iv)(B)(*2*), (e)(9)(iii)(B), or (e)(10)(iv) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(8)(iv) through (vii) or (e)(9)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(7)(ii), (e)(8)(ii), (e)(8)(iii), (e)(9)(ii), (e)(10)(ii), or (e)(10)(iii) of this section, as applicable.

(12) *Lender Responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan

was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a claim with the guaranty agency in accordance with §682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(v) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(8)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(ii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to consumer reporting agencies as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(8)(ii)(B) of this section.

(vi) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(13) *Requirements for certifying a borrower's eligibility for a loan.* (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1991, a student who had a general education diploma or received one before the scheduled completion of the program of instruction is deemed to have the ability to benefit from the training offered by the school.

(ii) A student not described in paragraph (e)(13)(i) of this section is considered to have the ability to benefit from training offered by the school if the student—

(A) For periods of enrollment beginning prior to July 1, 1987, was determined to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6, as in existence at the time the determination was made;

(B) For periods of enrollment beginning between July 1, 1987 and June 30, 1996, achieved a passing grade on a test—

(*1*) Approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991, or by the accrediting agency for other periods; and

(*2*) Administered substantially in accordance with the requirements for use of the test;

(C) Successfully completed a program of developmental or remedial education provided by the school; or

(D) For periods of enrollment beginning on or after July 1, 1996 through June 30, 2000—

(*1*) Obtained, within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of 34 CFR part 668; or

(*2*) Enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of 34 CFR part 668.

(E) For periods of enrollment beginning on or after July 1, 2000—

(*1*) Met either of the conditions described in paragraph (e)(13)(ii)(D) of this section; or

(*2*) Was home schooled and met the requirements of 34 CFR 668.32(e)(4).

(iii) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if—

(A) The school certified the eligibility of the student for a FFEL Program loan; and

(B) At the time of certification, the student would not meet the requirements for employment (in the student's State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

(iv) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student has the ability to benefit from the training offered by the school if the student received a high school diploma or its recognized equivalent prior to enrollment at the school.

(14) *Identity theft.* (i) The unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(15) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

(f) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (h) through (k) of this section.

(2) *Suspension of collection activity.* (i) If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(A) Must suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief

under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(ii) If the lender is notified that a co-maker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the co-maker or endorser and—

(A) Must suspend collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (g) of this section, if—

(A) The borrower has filed a petition for relief under chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under chapters 7 or 11 of the Bankruptcy Code before October 8, 1998 and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (f)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(g) *Claim procedures for a loan held by a lender*—(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

(i) The original or a true and exact copy of the promissory note.

(ii) The loan application, if a separate loan application was provided to the lender.

(iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the notification described in paragraph (c)(3)(iii) or (c)(9)(ix) of this section in which the Secretary notifies the lender that the borrower is totally and permanently disabled.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;

(vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died.

(ii) Within 60 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled, in accordance with paragraphs (c)(3)(iii) or (c)(9)(ix) of this section.

(iii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iv) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(v) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (f)(3) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency*—(1) *General.* (i) Except as provided in paragraph (h)(1)(v) of this section, the guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death, disability, and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for closed school or false certification claims.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (i) of this section to oppose the discharge of the loan by the bankruptcy court.

(iii) In the case of a closed school claim or a false certification claim based on the determination that the borrower did not sign the loan application, the promissory note, or the authorization for the electronic transfer of loan funds, or that the school failed to test, or improperly tested, the student's ability to benefit, the guaranty agency shall document its determination that the borrower is eligible for discharge under paragraphs (d) or (e) of this section and pay the borrower or the holder the amount determined under paragraph (h)(2) of this section.

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will

not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

(v) In the case of a disability claim based on a veteran's discharge application processed in accordance with paragraph (c)(9) of this section, the guaranty agency must review the claim promptly and not later than 45 days after the claim was filed by the lender pay the claim or return the claim to the lender in accordance with paragraph (c)(9)(xi)(B) of this section.

(2)(i) The amount of loss payable—

(A) On a death or disability claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim.

(B) On a bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (h)(3) of this section.

(ii) The amount of loss payable to a lender on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(iii) In the case of a closed school or false certification claim filed by a lender on an outstanding loan owed by the borrower, on the same date that the agency pays a claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a claim filed by a lender based on a request received from a borrower whose loan had been repaid in full by, or on behalf of the borrower to the lender, on the same date that the agency notifies the lender that the borrower is eligible for a closed school or false certification discharge, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(v) In the case of a loan that has been included in a Consolidation Loan, the agency shall pay to the holder of the borrower's Consolidation Loan, an amount equal to—

(A) The amount paid on the loan by or on behalf of the borrower at the time the loan was paid through consolidation;

(B) The amount paid by the consolidating lender to the holder of the loan when it was repaid through consolidation; minus

(C) Any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source if those refunds or payments were—

(*1*) Received by the borrower or received by the holder and applied to the borrower's loan balance before the date the loan was repaid through consolidation; or

(*2*) Received by the borrower or received by the Consolidation Loan holder on or after the date the consolidating lender made a payment to the former holder to discharge the borrower's obligation to that former holder.

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the

lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death, disability, or bankruptcy claims; or

(B) 90 days for closed school or false certification claims.

(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed prior to October 8, 1998 with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim.

(ii) In all other cases, the guaranty agency must determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the guaranty agency determines that repayment would not constitute an undue hardship, the guaranty agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs. If the guaranty agency has determined that the expected costs of opposing the discharge petition will exceed one-third of the total amount of the loan, it may, but is not required to, engage in the activities described in paragraph (i)(1)(iv) of this section.

(iv) The guaranty agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13.* The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful

can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(j) *Mandatory purchase by a lender of a loan subject to a bankruptcy claim.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) *Claims for reimbursement from the Secretary on loans held by guarantee agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under §682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or has filed for relief in bankruptcy, in accordance with the procedures in paragraph (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the ''lender'' and ''guaranty agency'' in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that

extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined by the Secretary to be totally and permanently disabled under § 682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay—

(i) The borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source; or

(ii) The amount determined under paragraph (h)(2)(iv) of this section to the holder of the borrower's Consolidation Loan.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the Secretary makes a determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

(iii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(l) *Unpaid refund discharge*—(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed, in whole or in part on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums or Federal default fees) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed, in whole or in part, on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law

and regulations, including this section, if—

(i) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the guarantor receivesa complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums or Federal default fees) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums or Federal default fees) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which

efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) Within 30 days of the guarantor's determination, the agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination. The guaranty agency must make a determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for any period during which collection activity was suspended under this section. The holder may capitalize any interest accrued and not paid during these periods in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification

for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency*—(1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums or Federal default fees) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

(r) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency must return 100 percent of these payments to the sender. The guaranty agency must promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it must notify the borrower that there is no obligation to repay a loan discharged on the basis of death, bankruptcy, false certification, or closing of the school.

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the determination that the borrower is eligible for a total and permanent disability discharge, the guaranty agency must promptly return these payments to the sender. At the same time that the agency returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability, unless the loan is reinstated in accordance with paragraph (c) of this section, or the Secretary directs the borrower otherwise.

(3) When the Secretary discharges the loan, the Secretary returns to the sender any payments received by the Secretary on the loan after the date the borrower became totally and permanently disabled.

(4) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraphs (r)(1) or (r)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

(s) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period—

(1) Includes any period during which the lender does not require the borrower to make a payment on the loan.

(2) Begins on the date on which the borrower qualifies for the requested deferment as provided in § 682.210(a)(5) or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended;

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender;

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.402, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 81 FR 76079, Nov. 1, 2016, § 682.402, eff. July 1, 2017, was amended:

A. By revising paragraphs (d)(3);

B. In paragraph (d)(6)(ii)(B)(*1*) and (*2*), by removing the words ''sworn statement (which may be combined)'' and adding in their place the word ''application'';

C. By revising paragraph (d)(6)(ii)(F) introductory text;

D. In paragraph (d)(6)(ii)(F)(*5*) removing the words ''and sworn statement'';

E. In paragraph (d)(6)(ii)(G) introductory text, by removing the words ''request and supporting sworn statement'' and adding, in their place, the words ''completed application'';

F. By revising paragraph (d)(6)(ii)(H);

G. By redesignating paragraph (d)(6)(ii)(I) as paragraph (d)(6)(ii)(J);

H. By adding new paragraph (d)(6)(ii)(I) and paragraph (d)(6)(ii)(K);

I. By revising paragraphs (d)(7)(ii) and (iii) and (d)(8); and

J. In paragraph (e)(6)(iii), by removing the last sentence.

At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added and revised text is set forth as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(d) * * *

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a completed closed school discharge application on a form approved by the Secretary. By signing the application, the borrower certifies—

* * * * *

(6) * * *

(ii) * * *

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it, the opportunity for review by the Secretary, and how to request such a review within 30 days after the date the agency—

* * * * *

(H) If a borrower described in paragraph (d)(6)(ii)(E) or (F) of this section fails to submit the completed application within 60 days of being notified of that option, the lender or guaranty agency shall resume collection.

(I) Upon resuming collection on any affected loan, the lender or guaranty agency provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

* * * * *

(K)(*1*) Within 30 days after receiving the borrower's request for review under paragraph (d)(6)(ii)(F) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review.

(*2*) The Secretary notifies the agency and the borrower of the determination upon review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraph (d)(6)(ii)(H) or (I) of this section, as applicable.

(*3*) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency shall, within 30 days after being so informed, take actions required under paragraphs (d)(6)(ii)(E) and (d)(6)(ii)(G)(*1*) of this section, and the lender shall take the actions described in paragraph (d)(7)(iv) of this section, as applicable.

* * * * *

(7) * * *

(i) * * *

(ii) If the borrower fails to submit a completed application described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period. Upon resuming collection, the lender provides the borrower with another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives a completed application described in paragraph (d)(3) of this section from the borrower, or notification from the agency that the Secretary approved the borrower's appeal in accordance with paragraph (d)(6)(ii)(K)(*3*) of this section.

* * * * *

(8) *Discharge without an application.* (i) A borrower's obligation to repay a FFEL Program loan may be discharged without an application from the borrower if the—

(A) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.214 under the William D. Ford Federal Direct Loan Program; or

(B) Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

(ii) With respect to schools that closed on or after November 1, 2013, a borrower's obligation to repay a FFEL Program loan will be discharged without an application from the borrower if the Secretary or guaranty agency determines that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.

* * * * *

§ 682.403 [Reserved]

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guaranty agency for—

(i) 95 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998;

(ii) 98 percent of its losses on default claim payments to lenders for loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 100 percent of its losses on default claim payments to lenders—

(A) For loans for which the first disbursement is made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For loans that meet the definition of exempt claims in paragraph (a)(2)(iii) of this section;

(E) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) *Default aversion assistance* means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.

(iii) *Exempt claims* means claims with respect to loans for which it is determined that the borrower (or student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all of a portion of the loan or for interest benefits on the loan.

(3) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender's request. The guaranty agency may not charge the school or the school's agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

(b) *Reduction in reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 88 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 85 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 78 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 75 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that addresses instances in which, for a non-school originated loan, a lender learns that the school terminated its teaching activities while a student was enrolled during the academic period covered by the loan;

(iii) That were filed by lenders at the direction of the Secretary; or

(iv) On loans made under a guaranty agency's approved lender-of-last-resort program.

(4) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(*1*) Paid under § 682.412(e);

(*2*) Paid under a policy established by the agency that addresses the condition identified in paragraph (b)(3)(ii) of this section; or

(*3*) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency

after the date the guarterly report is due until the quaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans that were refinanced pursuant to section 428B(e)(2) and (3) of the Act, and all loans guaranteed on or after October 1, 1993, a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by §682.410(b) (6) or (7), and §682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower on a defaulted loan must be applied first to the collection costs incurred to collect that amount and then to other incidental charges, such as late charges, then to accrued interest and then to principal.

(g) *Share of borrower payments returned to the Secretary.* (1) After an agency pays a default claim to a holder using assets of the Federal Fund, the agency must pay to the Secretary the portion of payments received on those defaulted loans remaining after—

(i) The agency deposits into the Federal Fund the amount of those payments equal to the applicable complement of the reinsurance percentage that was in effect at the time the claim was paid; and

(ii) The agency has deducted an amount equal to—

(A) 30 percent of borrower payments received before October 1, 1993;

(B) 27 percent of borrower payments received on or after October 1, 1993, and before October 1, 1998;

(C) 24 percent of borrower payments received on or after October 1, 1998, and before October 1, 2003; and

(D) 23 percent of borrower payments received on or after October 1, 2003.

(E) 16 percent of borrower payments received on or after October 1, 2007.

(2) Unless the Secretary approves otherwise, the guaranty agency must pay to the Secretary the Secretary's share of borrower payments within 45 days of its receipt of the payments.

(h) *Account maintenance fee.* A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. For fiscal years 2000 through 2007, the fee is 0.10 percent of the original principal amount of outstanding loans. After fiscal year 2007, the fee is 0.06 percent of the original principal amount of outstanding loans.

(i) *Loan processing and issuance fee.* A guaranty agency is paid a loan processing and issuance fee based on the principal amount of FFEL Program loans originated during a fiscal year

that are insured by the agency. The fee is paid quarterly. No payment is made for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. For fiscal years 1999 through 2003, the fee is 0.65 percent of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.

(j) *Default aversion fee*—(1) *General.* If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender's request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender's request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of the borrower's delinquency. A guaranty agency may not restrict a lender's choice of the date during this period on which the lender submits a request for default aversion assistance.

(2) *Amount of fees transferred.* No more frequently than monthly, a guaranty agency may transfer default aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) *Calculation of fee.* (i) For purposes of calculating the one percent default aversion fee described in paragraph (j)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (j)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or

(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

(k) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 25746, May 17, 1994; 59 FR 61429, Nov. 30, 1994; 60 FR 31411, June 15, 1995; 61 FR 60486, Nov. 27, 1996; 64 FR 18980, Apr. 16, 1999; 64 FR 58628, Oct. 29, 1999; 71 FR 45707, Aug. 9, 2006; 72 FR 62006, Nov. 1, 2007; 78 FR 65815, Nov. 1, 2013]

§ 682.405 Loan rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans, except for loans for which a judgment has been obtained, loans on which a default claim was filed under § 682.412, and loans on which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after—

(i) The borrower has made and the guaranty agency has received nine of the ten qualifying payments required under a monthly repayment agreement.

(A) A qualifying payment is—

(*1*) Made voluntarily;

(*2*) In the full amount required; and

(*3*) Received within 20 days of the due date for the payment, and

(B) All nine payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month, and

(ii) The loan has been sold to an eligible lender or assigned to the Secretary.

(3)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must continue collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the guaranty agency is otherwise precluded from doing so under § 682.410(b)(9).

(ii) After the borrower makes the fifth qualifying monthly payment, the guaranty agency must, unless otherwise directed by the borrower, suspend the garnishment order issued to the borrower's employer.

(iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

(4) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation. Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least 9 of the 10 payments required under a monthly repayment agreement.

(i) Each payment must be—

(A) Made voluntarily;

(B) For the full amount required;

(C) Received within 20 days of the due date for the payment; and

(D) Reasonable and affordable.

(ii) All 9 payments must be received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) The guaranty agency initially considers the borrower's reasonable and affordable payment amount to be an amount equal to 15 percent of the amount by which the borrower's Adjusted Gross Income (AGI) exceeds 150 percent of the poverty guideline amount applicable to the borrower's family size and State, divided by 12, except that if this amount is less than $5, the borrower's monthly rehabilitation payment is $5.

(iv) The guaranty agency or its agents may calculate the payment amount based on information provided orally by the borrower or the borrower's representative and provide the borrower with a rehabilitation agreement using that amount. The guaranty agency must request documentation from the borrower to confirm the borrower's AGI and family size. If the borrower does not provide the guaranty agency or its agents with any documentation requested by the guaranty agency to calculate or confirm the reasonable and affordable payment amount, within a reasonable time deadline set by the guaranty agency or its agent, the rehabilitation agreement provided is null and void.

(v) The reasonable and affordable payment amount calculated under this section must not be—

(A) A required minimum loan payment amount (e.g., $50) if the agency determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(vi) Within 15 business days of its determination of the borrower's loan rehabilitation payment amount, the guaranty agency must provide the borrower with a written rehabilitation agreement which includes the borrower's payment amount calculated under paragraph (b)(1)(iii), a prominent statement that the borrower may object orally or in writing to the payment amount, with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender or assignment to the Secretary (i.e., rehabilitated). To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the agency. The agency may not impose any conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement must inform the borrower—

(A) Of the effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment);

(B) Of the amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and

(C) That the rehabilitation agreement is null and void if the borrower fails to provide the documentation required to confirm the monthly payment calculated under paragraph (b)(1)(iii) of this section.

(vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency or its agents must recalculate the payment amount based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and must consider—

(A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(B) Family size as defined in § 682.215(a)(3); and

(C) Reasonable and necessary expenses, which include—

(*1*) Food;

(*2*) Housing;

(*3*) Utilities;

(*4*) Basic communication expenses;

(*5*) Necessary medical and dental costs;

(*6*) Necessary insurance costs;

(*7*) Transportation costs;

(*8*) Dependent care and other work-related expenses;

(*9*) Legally required child and spousal support;

(*10*) Other title IV and non-title IV student loan payments; and

(*11*) Other expenses approved by the Secretary.

(viii) The guaranty agency must provide the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount within the timeframe specified in paragraph (b)(1)(vii) of this section. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the agency.

(ix) The agency must include any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (b)(1) of this section have been made.

(x) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(vii) of this section.

(xi) Except as provided in paragraph (c) of this section, during the rehabilitation period, the guaranty agency must limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

(2)(i) For the purposes of this section, payment in the full amount required means payment of an amount that is reasonable and affordable, based on the borrower's total financial circumstances, as agreed to by the borrower and the agency. Voluntary payments are those made directly by the borrower and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the 9- or 10-month payment period as applicable.

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

(3) Upon the sale of a rehabilitated loan to an eligible lender or assignment to the Secretary—

(i) The guaranty agency must, within 45 days of the sale or assignment—

(A) Provide notice to the prior holder of such sale or assignment, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

(4)(i)An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under §682.209(a) or (e). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

(ii) [Reserved]

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078–6)

[59 FR 33355, June 28, 1994, as amended at 60 FR 30788, June 12, 1995; 64 FR 18980, Apr. 16, 1999; 64 FR 58965, Nov. 1, 1999; 66 FR 34764, June 29, 2001; 67 FR 67080, Nov. 1, 2002; 68 FR 75429, Dec. 31, 2003; 71 FR 45707, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 73 FR 63254, Oct. 23, 2008; 74 FR 56000, Oct. 29, 2009; 78 FR 65815, Nov. 1, 2013; 80 FR 67237, Oct. 30, 2015; 81 FR 76080, Nov. 1, 2016]

EFFECTIVE DATE NOTE: At 81 FR 76080, Nov. 1, 2016, §682.405 was amended by adding paragraph (b)(4)(ii), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b)(4) * * *

(ii) The lender must not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization under §682.202(b).

* * * * *

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 30 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999 and prior to July 1, 2010, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all default aversion assistance requirements in § 682.404(a)(2)(ii).

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the

guaranty agency under § 682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in appendix D to this part.

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(d) A guaranty agency may not make a claim payment from the Federal Fund or receive a reinsurance payment on a loan if the agency determines or is notified by the Secretary that the lender offered or provided an improper inducement as described in paragraph (5)(i) of the definition of lender in § 682.200(b).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 25746, May 17, 1994; 59 FR 33356, June 28, 1994; 59 FR 61429, Nov. 30, 1994; 61 FR 60486, Nov. 27, 1996; 64 FR 18980, Apr. 16, 1999; 64 FR 58629, Oct. 29, 1999; 64 FR 58963, Nov. 1, 1999; 65 FR 65620, Nov. 1, 2000; 66 FR 34764, June 29, 2001; 71 FR 45708, Aug. 9, 2006; 72 FR 62006, Nov. 1, 2007; 78 FR 65816, Nov. 1, 2013]

§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a FFEL PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a FFEL Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by

or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower and any endorser to make any further payments on an eligible FFEL Program Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The obligation of a borrower to make any further payments towards the portion of a joint FFEL Consolidation Loan incurred on behalf of an eligible victim is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The obligation of a borrower and any endorser to make any further payments on a FFEL PLUS Loan incurred on behalf of an eligible victim is discharged.

(ii) The obligation of the borrower to make any further payments towards the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim is discharged.

(4) The parent of an eligible public servant may qualify for a discharge of a FFEL PLUS loan incurred on behalf of the eligible public servant, or the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(13) of this section, a discharge may be granted on—

(i) A FFEL Program Loan owed by the spouse of an eligible public servant;

(ii) A FFEL PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a FFEL Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the lender shall suspend collection activity on the borrower's eligible FFEL Program Loan and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the lender determines that the borrower does not qualify for a discharge under this section, or the lender does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the lender that the borrower claims to qualify for a discharge, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender was notified by the borrower. The lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(4) If the lender determines that the borrower qualifies for a discharge under this section, the lender shall provide the guaranty agency with the following documentation—

(i) The loan application, if a separate loan application was provided to the lender; and

(ii) The completed discharge form, and all accompanying documentation supporting the discharge request that formed the basis for the determination that the borrower qualifies for a discharge.

(5) The lender must file a discharge claim within 60 days of the date on which the lender determines that the borrower qualifies for a discharge.

(6) The guaranty agency must review a discharge claim under this section promptly.

(7) If the guaranty agency determines that the borrower does not qualify for a discharge under this section, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the next payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(8) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim not later than 90 days after the claim was filed by the lender.

(9) The amount of loss payable on a discharge claim is—

(i) An amount equal to the sum of the remaining principal balance and interest accrued on the loan, unpaid collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim; or

(ii) In the case of a partial discharge of a Consolidation Loan, the amount specified in paragraph (c)(9)(i) of this section for the portion of the Consolidation Loan incurred on behalf of the eligible victim.

(10) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge under this section.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

(11) After being notified that the guaranty agency has paid a discharge claim, the lender shall notify the borrower that the loan has been discharged or, in the case of a partial discharge of a Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Consolidation Loan, the lender shall return to the sender any payments received by the lender after the date the guaranty agency paid the discharge claim.

(12) The Secretary reimburses the guaranty agency for a discharge claim paid to the lender under this section after the agency pays the lender. Any failure by the lender to satisfy due diligence requirements prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default are waived by the Secretary, provided the loan was held by an eligible loan holder at all times.

(13) Except in the case of a partial discharge of a Consolidation Loan, the guaranty agency shall promptly return to the sender any payment on a discharged loan made by the sender and received after the Secretary pays a discharge claim. At the same time that the agency returns the payment it shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan.

(14) A FFEL Program Loan owed by an eligible public servant or an eligible victim may be discharged under the procedures in §682.402 for a discharge based on the death or total and permanent disability of the eligible public servant or eligible victim.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii) or (d)(3), and (d)(2)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was

present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant or an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief executive officer of the guaranty agency.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 72 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) A lender or guaranty agency may require the borrower to submit additional information that the lender or guaranty agency deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; and

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint Consolidation Loan applications or approved FFEL or Direct Loan PLUS loan applications.

(g) *Limitations on discharge.* (1) Only outstanding Federal SLS Loans, Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Federal Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2)(i) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's loan prior to the date the loan was discharged.

(ii) A borrower may apply for a partial discharge of a joint Consolidation loan due to death or total and permanent disability under the procedures in § 682.402(b) or (c). If the borrower is granted a partial discharge under the procedures in § 682.402(b) or (c) the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5) or § 682.402(c)(1)(i).

(iii) A borrower may apply for a discharge of a PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 682.402(b). If a borrower is granted a discharge under the procedures in § 682.402(b), the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5).

(3) A determination by a lender or a guaranty agency that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 682.402.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a FFEL PLUS Loan or on a Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78080, Dec. 28, 2006, as amended at 72 FR 55053, Sept. 28, 2007; 78 FR 65816, Nov. 1, 2013]

§ 682.408 [Reserved]

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary directs a guaranty agency to promptly assign to the Secretary any loans held by the agency on which the agency has received payment under §682.402(f), 682.402(k), or 682.404. The collection of unpaid loans owed by Federal employees by Federal salary offset is, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

(i) The unpaid principal balance is at least $100.

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years.

(iii) A payment has not been received on the loan in the last year.

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans, including collections by Federal Income Tax Refund Offset, for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under §682.401(b)(1) and §682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.*

(A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing those rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of the loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency demonstrates that its compliance with § 682.401(b)(1) and § 682.405 has reduced substantially its fiscal year loan type recovery rate or rates or if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(*1*) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies.

(*2*) The fiscal year loan type recovery rate for loans for the agency and for all agencies categorized by age of the loans as the Secretary may determine.

(*3*) The performance of the agency, and all agencies, in default aversion.

(*4*) The agency's performance on judgment enforcement.

(*5*) The existence and use of any state or guaranty agency-specific collection tools.

(*6*) The agency's level of compliance with §§ 682.409 and 682.410(b)(6).

(*7*) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the

Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The original or a true and exact copy of the promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application, if a separate application was provided to the lender.

(v) A payment history for the loan, as described in § 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(ii)(D).

(vii) The record of the lender's disbursement of Stafford and PLUS loan funds to the school for delivery to the borrower.

(viii) If the MPN or promissory note was signed electronically, the name and location of the entity in possession of the original electronic MPN or promissory note.

(5) The agency may submit copies of required documents in lieu of originals.

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under § 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

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§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* A guaranty agency shall establish and maintain a reserve fund to be used solely for its activities as a guaranty agency under the FFEL Program (''guaranty activities''). The guaranty agency shall credit to the reserve fund—

(i) The total amount of insurance premiums and Federal default fees collected;

(ii) Funds received from a State for the agency's guaranty activities, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death, disability, closed schools, and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Transitional support payments received under section 458(a) of the Act;

(vii) Funds collected by the guaranty agency on FFEL Program loans on which a claim has been paid;

(viii) Investment earnings on the reserve fund; and

(ix) Other funds received by the guaranty agency from any source for the agency's guaranty activities.

(2) *Uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section to pay only—

(i) Insurance claims;

(ii) Costs that are reasonable, as defined under § 682.410(a)(11)(iii), and that are ordinary and necessary for the agency to fulfill its responsibilities under the HEA, including costs of collecting loans, providing default aversion assistance, monitoring enrollment and repayment status, and carrying out any other guaranty activities. Those costs must be—

(A) Allocable to the FFEL Program;

(B) Not higher than the agency would incur under established policies, regulations, and procedures that apply to any comparable non-Federal activities of the guaranty agency;

(C) Not included as a cost or used to meet cost sharing or matching requirements of any other federally supported activity, except as specifically provided by Federal law;

(D) Net of all applicable credits; and

(E) Documented in accordance with applicable legal and accounting standards;

(iii) The Secretary's equitable share of collections;

(iv) Federal advances and other funds owed to the Secretary;

(v) Reinsurance fees;

(vi) Insurance premiums and Federal default fees related to cancelled loans;

(vii) Borrower refunds, including those arising out of student or other borrower claims and defenses;

(viii) (A) The repayment, on or after December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this section, if the agency provides the Secretary 30 days prior notice of the repayment and demonstrates that—

(*1*) These amounts were originally received by the agency under appropriate contemporaneous documentation specifying that receipt was on a temporary basis only;

(*2*) The objective for which these amounts were originally received by the agency has been fully achieved; and

(*3*) Repayment of these amounts would not cause the agency to fail to comply with the minimum reserve levels provided by paragraph (a)(10) of this section, except that the Secretary may, for good cause, provide written permission for a payment that meets the other requirements of this paragraph (a)(2)(ix)(A).

(B) The repayment, prior to December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this

section, if the agency demonstrates that—

(*1*) These amounts were originally received by the agency under appropriate contemporaneous documentation that receipt was on a temporary basis only; and

(*2*) The objective for which these amounts were originally received by the agency has been fully achieved.

(ix) Any other costs or payments ordinary and necessary to perform functions directly related to the agency's responsibilities under the HEA and for their proper and efficient administration;

(x) Notwithstanding any other provision of this section, any other payment that was allowed by law or regulation at the time it was made, if the agency acted in good faith when it made the payment or the agency would otherwise be unfairly prejudiced by the nonallowability of the payment at a later time; and

(xi) Any other amounts authorized or directed by the Secretary.

(3) *Accounting basis.* Except as approved by the Secretary, a guaranty agency shall credit the items listed in paragraph (a)(1) of this section to its reserve fund upon their receipt, without any deferral for accounting purposes, and shall deduct the items listed in paragraph (a)(2) of this section from its reserve fund upon their payment, without any accrual for accounting purposes.

(4) *Accounting records.* (i) The accounting records of a guaranty agency must reflect the correct amount of sources and uses of funds under paragraph (a) of this section.

(ii) A guaranty agency may reverse prior credits to its reserve fund if—

(A) The agency gives the Secretary prior notice setting forth a detailed justification for the action;

(B) The Secretary determines that such credits were made erroneously and in good faith; and

(C) The Secretary determines that the action would not unfairly prejudice other parties.

(iii) A guaranty agency shall correct any other errors in its accounting or reporting as soon as practicable after the errors become known to the agency.

(iv) If a general reconstruction of a guaranty agency's historical accounting records is necessary to make a change under paragraphs (a)(4)(ii) and (a)(4)(iii) of this section or any other retroactive change to its accounting records, the agency may make this reconstruction only upon prior approval by the Secretary and without any deduction from its reserve fund for the cost of the reconstruction.

(5) *Investments.* The guaranty agency shall exercise the level of care required of a fiduciary charged with the duty of investing the money of others when it invests the assets of the reserve fund described in paragraph (a)(1) of this section. It may invest these assets only in low-risk securities, such as obligations issued or guaranteed by the United States or a State.

(6) *Development of assets.* (i) If the guaranty agency uses in a substantial way for purposes other than the agency's guaranty activities any funds required to be credited to the reserve fund under paragraph (a)(1) of this section or any assets derived from the reserve fund to develop an asset of any kind and does not in good faith allocate a portion of the cost of developing and maintaining the developed asset to funds other than the reserve fund, the Secretary may require the agency to—

(A) Correct this allocation under paragraph (a)(4)(iii) of this section; or

(B) Correct the recorded ownership of the asset under paragraph (a)(4)(iii) of this section so that—

(*1*) If, in a transaction with an unrelated third party, the agency sells or otherwise derives revenue from uses of the asset that are unrelated to the agency's guaranty activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds or revenue equal to the fair percentage of the total development cost of the asset paid with the reserve fund monies or provided by assets derived from the reserve fund; or

(*2*) If the agency otherwise converts the asset, in whole or in part, to a use unrelated to its guaranty activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a fair percentage of the fair market value or, in the case

of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use.

(ii) If the agency uses funds or assets described in paragraph (a)(6)(i) of this section in the manner described in that paragraph and makes a cost and maintenance allocation erroneously and in good faith, it shall correct the allocation under paragraph (a)(4)(iii) of this section.

(7) *Third-party claims.* If the guaranty agency has any claim against any other party to recover funds or other assets for the reserve fund, the claim is the property of the United States.

(8) *Related-party transactions.* All transactions between a guaranty agency and a related organization or other person that involve funds required to be credited to the agency's reserve fund under paragraph (a)(1) of this section or assets derived from the reserve fund must be on terms that are not less advantageous to the reserve fund than would have been negotiated on an arm's-length basis by unrelated parties.

(9) *Scope of definition.* The provisions of this §682.410(a) define reserve funds and assets for purposes of sections 422 and 428 of the Act. These provisions do not, however, affect the Secretary's authority to use all funds and assets of the agency pursuant to section 428(c)(9)(F)(vi) of the Act.

(10) *Minimum reserve fund level.* The guaranty agency must maintain a current minimum reserve level of not less than—

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(11) *Definitions.* For purposes of this section—

(i) *Reserve fund level* means—

(A) The total of reserve fund assets as defined in paragraph (a)(1) of this section;

(B) Minus the total amount of the reserve fund assets used in accordance with paragraphs (a)(2) and (a)(3) of this section; and

(ii) *Amount of loans outstanding* means—

(A) The sum of—

(*1*) The original principal amount of all loans guaranteed by the agency; and

(*2*) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(B) Minus the original principal amount of all loans on which—

(*1*) The loan guarantee was cancelled;

(*2*) The loan guarantee was transferred to another agency;

(*3*) Payment in full has been made by the borrower;

(*4*) Reinsurance coverage has been lost and cannot be regained; and

(*5*) The agency paid claims.

(iii) *Reasonable cost* means a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The burden of proof is upon the guaranty agency, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. In determining reasonableness of a given cost, consideration must be given to—

(A) Whether the cost is of a type generally recognized as ordinary and necessary for the proper and efficient performance and administration of the guaranty agency's responsibilities under the HEA;

(B) The restraints or requirements imposed by factors such as sound business practices, arms-length bargaining, Federal, State, and other laws and regulations, and the terms and conditions of the guaranty agency's agreements with the Secretary; and

(C) Market prices of comparable goods or services.

(b) *Administrative requirements*—(1) *Independent audits.* The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) [Reserved]

(ii) A guaranty agency must conduct an audit in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[2] If a nonprofit guaranty agency meets the criteria in 2 CFR part 200, subpart F—Audit Requirements to have a program specific audit, and chooses that option, the program-specific audit must meet the following requirements:

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(18)(i) and 682.405(b)(1)(iv)(B), the amount charged a borrower must equal the lesser of—

(i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

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

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

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

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

(4) *Capitalization of unpaid interest.* The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Reports to consumer reporting agencies.* (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(ii) of this section, and on a regular basis, to all nationwide consumer reporting agencies—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, total and permanent disability, or closed school or false certification.

(ii) The guaranty agency, after it pays a default claim on a loan but before it reports the default to a consumer reporting agency or assesses collection costs against a borrower, shall, within the timeframe specified in paragraph (b)(6)(ii) of this section, provide the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

[2] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20–30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to consumer reporting agencies until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all nationwide consumer reporting agencies to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to consumer reporting agencies and provide deadlines and method for requesting this relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against Federal or state income tax refunds or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation;

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and

assignment of the loan to the Secretary for the filing of a lawsuit against the borrower by the Federal Government; and

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

(vii) As part of the guaranty agency's response to a borrower who appeals an adverse decision resulting from the agency's administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(6) *Collection efforts on defaulted loans.* (i) A guaranty agency must engage in reasonable and documented collection activities on a loan on which it pays a default claim filed by a lender. For a non-paying borrower, the agency must perform at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt.

(ii) Within 45 days after paying a lender's default claim, the agency must send a notice to the borrower that contains the information described in paragraph (b)(5)(ii) of this section. During this time period, the agency also must notify the borrower, either in the notice containing the information described in paragraph (b)(5)(ii) of this section, or in a separate notice, that if he or she does not make repayment arrangements acceptable to the agency, the agency will promptly initiate procedures to collect the debt. The agency's notification to the borrower must state that the agency may administratively garnish the borrower's wages, file a civil suit to compel repayment, offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, assign the loan to the Secretary in accordance with §682.409, and take other lawful collection means to collect the debt, at the discretion of the agency. The agency's notification must include a statement that borrowers may have certain legal rights in the collection of debts, and that borrowers may wish to contact counselors or lawyers regarding those rights.

(iii) Within a reasonable time after all of the information described in paragraph (b)(6)(ii) of this section has been sent, the agency must send at least one notice informing the borrower that the default has been reported to all nationwide consumer reporting agencies and that the borrower's credit rating may thereby have been damaged.

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

(v) A guaranty agency must attempt an annual Federal offset against all eligible borrowers. If an agency initiates proceedings to offset a borrower's State or Federal income tax refunds and other payments made by the Federal Government to the borrower, it may not initiate those proceedings sooner than 60 days after sending the notice described in paragraph (b)(5)(ii)(A) of this section.

(vi) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)(vii) of this section, by following the procedures described in paragraph (b)(9) of this section.

(vii) A guaranty agency may file a civil suit against a borrower to compel repayment only if the borrower has no wages that can be garnished under paragraph (b)(9) of this section, or the agency determines that the borrower has sufficient attachable assets or income that is not subject to administrative wage garnishment that can be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

(7) *Special conditions for agency payment of a claim.* (i) A guaranty agency may adopt a policy under which it pays

a claim to a lender on a loan under the condition described in §682.404(b)(3)(ii).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(7)(i) of this section, the guaranty agency shall—

(A) Perform the loan servicing functions required of a lender under §682.208, except that the agency is not required to follow the consumer reporting agency reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under §682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan, exercise due diligence in accordance with §682.411 in attempting to collect the loan from the borrower and any endorser or comaker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(8) *Preemption of State law.* The provisions of paragraphs (b)(2), (5), and (6) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(9) *Administrative garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it must do so in accordance with the following procedures:

(A) At least 30 days before the initiation of garnishment proceedings, the guaranty agency must mail to the borrower's last known address, a written notice described in paragraph (b)(9)(i)(B) of this section.

(B) The notice must describe—

(*1*) The nature and amount of the debt;

(*2*) The intention of the agency to collect the debt through deductions from disposable pay;

(*3*) An explanation of the borrower's rights;

(*4*) The deadlines by which a borrower must exercise those rights; and

(*5*) The consequences of failure to exercise those rights in a timely manner.

(C) The guaranty agency must offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency must offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E)(*1*) The guaranty agency must offer the borrower an opportunity for a hearing in accordance with paragraphs (b)(9)(i)(F) through (J) of this section and other guidance provided by the Secretary, for any objection regarding the existence, amount, or enforceability of the debt, and any objection that withholding from the borrower's disposable pay in the amount or at the rate proposed in the notice would cause financial hardship to the borrower.

(*2*) The borrower must request a hearing in writing. At the borrower's option, the hearing may be oral or written. The time and location of the hearing is established by the guaranty agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. The agency notifies the borrower of the process for arranging the time and location of an oral hearing. All telephonic charges are the responsibility of the agency. All travel expenses incurred by the borrower in connection with an in-person oral hearing are the responsibility of the borrower.

(F)(*1*) If the borrower submits a written request for a hearing on the existence, amount, or enforceability of the debt—

(*i*) The guaranty agency must provide evidence of the existence of the debt. If the agency provides evidence of the existence of the debt, the borrower must prove by the preponderance of the evidence that no debt exists, the debt is not enforceable under applicable law, the amount the guaranty agency claims the borrower owes is incorrect, including that any amount of collection costs assessed to the borrower exceeds the limits established under

§ 682.410(b)(2), or the debt is not delinquent; and

(*ii*) The borrower may raise any of the objections described in paragraph (b)(9)(i)(F)(*1*)(*i*) of this section not raised in the written request, but must do so before a hearing is completed. For purposes of this paragraph, a hearing is completed when the record is closed and the hearing official notifies the parties that no additional evidence or objections will be accepted.

(*2*) If the borrower submits a written request for a hearing on an objection that withholding in the amount or at the rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents—

(*i*) The borrower bears the burden of proving the claim of financial hardship by a preponderance of the credible evidence by providing credible documentation that the amount of wages proposed in the notice would leave the borrower unable to meet basic living expenses of the borrower, the borrower's spouse, and the borrower's dependents. The documentation must show the amount of the costs incurred for basic living expenses and the income available from any source to meet those expenses;

(*ii*) The borrower's claim of financial hardship must be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size as the borrower's. For the purposes of this section, the standards published by the Internal Revenue Service under 26 U.S.C. 7122(d)(2) (the ''Collection Financial Standards'') establish the average amounts spent for basic living expenses for families of the same size as the borrower's family;

(*iii*) The amount that the borrower proves is incurred for a type of basic living expense is considered to be reasonable to the extent that the amount does not exceed the amount spent for that expense by families of the same size according to the Collection Financial Standards. If the borrower claims an amount for any basic living expense that exceeds the amount in the Collection Financial Standards, the borrower must prove that the amount claimed is reasonable and necessary;

(*iv*) If the borrower's objection to the rate or amount proposed in the notice is upheld in part, the garnishment must be ordered at a lesser rate or amount, that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency must notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order; and

(*v*) A determination by a hearing official that financial hardship would result from garnishment is effective for a period not longer than six months after the date of the finding. After this period, the guaranty agency may require the borrower to submit current information regarding the borrower's family income and living expenses. If the borrower fails to submit current information within 30 days of this request, or the guaranty agency concludes from a review of the available evidence that garnishment should now begin or the rate or the amount of an outstanding withholding should be increased, the guaranty agency must notify the borrower and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in paragraph (b)(9)(i) of this section.

(G) If the borrower's written request for a hearing is received by the guaranty agency on or before the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing and a decision has been rendered. The guaranty agency must provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(H) If the borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section,

the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. If a decision is not rendered within 60 days following receipt of a borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

(I) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge. Under no circumstance may the hearing official be under the supervision or control of the head of the guaranty agency or of a third-party servicer or collection contractor employed by the agency. Payment of compensation by the guaranty agency, third-party servicer, or collection contractor employed by the agency to the hearing official for service as a hearing official does not constitute impermissible supervision or control under this paragraph. The guaranty agency must ensure that, except as needed to arrange for administrative matters pertaining to the hearing, including the type of hearing requested by the borrower, the time, place, and manner of conducting an oral hearing, and post-hearing matters such as issuance of a hearing decision, all oral communications between the hearing official and any representative of the guaranty agency or with the borrower are made within the hearing of the other party, and that copies of any written communication with either party are promptly provided to the other party. This paragraph does not preclude a hearing in the absence of one of the parties if the borrower is given proper notice of the hearing, both parties have agreed on the time, place, and manner of the hearing, and one of the parties fails to attend.

(J) The hearing official must conduct any hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of any hearing. The hearing official must issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. However—

(*1*) The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence or raising a new objection described in paragraph (b)(9)(i)(F)(*1*)(*ii*) of this section; and

(*2*) The agency may request, and the hearing official must grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to any such additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(*1*)(*ii*) of this section.

(K) An employer served with a garnishment order from the guaranty agency with respect to a borrower whose wages are not then subject to a withholding order of any kind must deduct and pay to the agency from a borrower's disposable pay an amount that does not exceed the smallest of—

(*1*) The amount specified in the guaranty agency order;

(*2*) The amount permitted by section 488A(a)(1) of the Act, which is 15 percent of the borrower's disposable pay; or

(*3*) The amount permitted by 15 U.S.C. 1673(a)(2), which is the amount by which the borrower's disposable pay exceeds 30 times the minimum wage.

(L) If a borrower's pay is subject to more than one garnishment order—

(*1*) Unless other Federal law requires a different priority, the employer must pay the agency the amount calculated under paragraph (b)(9)(i)(K) of this section before the employer complies with any later garnishment orders, except a family support withholding order;

(*2*) If an employer is withholding from a borrower's pay based on a garnishment order served on the employer before the guaranty agency's order, or if a withholding order for family support is served on an employer at any

time, the employer must comply with the agency's garnishment order by withholding an amount that is the lesser of—

(*i*) The amount specified in the guaranty agency order; or

(*ii*) The amount calculated under paragraph (b)(9)(i)(L)(*3*) of this section less the amount or amounts withheld under the garnishment order or orders that have priority over the agency's order; and

(*3*) The cumulative withholding for all garnishment orders issued by guaranty agencies may not exceed, for an individual borrower, the amount permitted by 15 U.S.C. 1673, which is the lesser of 25 percent of the borrower's disposable pay or the amount by which the borrower's disposable pay exceeds 30 times the minimum wage. If a borrower owes debts to one or more guaranty agencies, each agency may issue a garnishment order to enforce each of those debts, but no single agency may order a total amount exceeding 15 percent of the disposable pay of a borrower to be withheld. The employer must honor these orders as provided in paragraphs (b)(9)(i)(L)(*1*) and (*2*) of this section.

(M) Notwithstanding paragraphs (b)(9)(i)(K) and (L) of this section, an employer may withhold and pay a greater amount than required under the order if the borrower gives the employer written consent.

(N) A borrower may, at any time, raise an objection to the amount or the rate of withholding specified in the guaranty agency's order to the borrower's employer on the ground of financial hardship. However, the guaranty agency is not required to consider such an objection and provide the borrower with a hearing until at least six months after the agency issued the most recent garnishment order, either one for which the borrower did not request a hearing or one that was issued after a hardship-related hearing determination. The agency may provide a hearing in extraordinary circumstances earlier than six months if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as injury, divorce, or catastrophic illness.

(O) A garnishment order is effective until the guaranty agency rescinds the order or the agency has fully recovered the amounts owed by the borrower, including interest, late fees, and collections costs. If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must notify the agency and comply with the order when sufficient disposable pay is available. Upon full recovery of the debt, the agency must send the borrower's employer notification to stop wage withholding.

(P) The guaranty agency must sue any employer for any amount that the employer, after receipt of the withholding order provided by the agency under paragraph (b)(9)(i)(R) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(Q) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The borrower has the burden of informing the guaranty agency of the circumstances surrounding the borrower's involuntary separation from employment.

(R) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it must send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(S) The notice given to the employer under paragraph (b)(9)(i)(R) of this section must contain only the information as may be necessary for the employer to comply with the withholding order and to ensure proper credit for payments received. At a minimum, the notice given to the employer includes the borrower's name, address, and Social Security Number, as well as instructions for withholding and information

as to where the employer must send payments.

(T)(*1*) A guaranty agency may use a third-party servicer or collection contractor to perform administrative activities associated with administrative wage garnishment, but may not allow such a party to conduct required hearings or to determine that a withholding order is to be issued. Subject to the limitations of paragraphs (b)(9)(i)(T)(*2*) and (*3*) of this section, administrative activities associated with administrative wage garnishment may include but are not limited to—

(*i*) Identifying to the agency suitable candidates for wage garnishment pursuant to agency standards;

(*ii*) Obtaining employment information for the purposes of garnishment;

(*iii*) Sending candidates selected for garnishment by the agency notices prescribed by the agency;

(*iv*) Negotiating alternative repayment arrangements with borrowers;

(*v*) Responding to inquiries from notified borrowers;

(*vi*) Receiving garnishment payments on behalf of the agency;

(*vii*) Arranging for the retention of hearing officials and for the conduct of hearings on behalf of the agency;

(*viii*) Providing information to borrowers or hearing officials on the process or conduct of hearings; and

(*ix*) Sending garnishment orders and other communications to employers on behalf of the agency.

(*2*) Only an authorized official of the agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues, including any order which it causes to be prepared or mailed by a third-party servicer or collection contractor. The guarantor must evidence the official's approval, either by including the official's signature on the order or, if the agency uses a form of withholding order that does not provide for execution by signature, by retaining in the agency's records the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued, and the debt for which the order was issued.

(*3*) The withholding order must identify the guaranty agency as the holder of the debt, as the issuer of the order, and as the sole party legally authorized to issue the withholding order. If a guaranty agency uses a third-party servicer or collection contractor to prepare and mail a withholding order that includes the name of the servicer or contractor that prepared or mailed the order, the guaranty agency must also ensure that the order contains no captions or representations that the servicer or contractor is the party that issued, or was empowered by Federal law or by the agency to issue, the withholding order.

(U) As specified in section 488A(a)(8) of the Act, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(V) A guaranty agency is required to suspend a garnishment order when the agency receives a borrower's fifth qualifying payment under a loan rehabilitation agreement with the agency, unless otherwise directed by the borrower, in accordance with §682.405(a)(3).

(ii) For purposes of paragraph (b)(9) of this section—

(A) ''Borrower'' includes all endorsers on a loan;

(B) ''Day'' means calendar day;

(C) ''Disposable pay'' means that part of a borrower's compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. ''Amounts required by law to be withheld'' include amounts for deductions such as Social Security taxes and withholding taxes, but do not include any amount withheld under a court order or other withholding order. All references to an amount of disposable pay refer to disposable pay calculated for a single week;

(D) ''Employer'' means a person or entity that employs the services of another and that pays the latter's wages or salary and includes, but is not limited to, State and local governments,

but does not include an agency of the Federal Government;

(E) ''Financial hardship'' means an inability to meet basic living expenses for goods and services necessary for the survival of the borrower and the borrower's spouse and dependents;

(F) ''Garnishment'' means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order; and

(G) ''Withholding order'' means any order for withholding or garnishment of pay issued by the guaranty agency and may also be referred to as ''wage garnishment order'' or ''garnishment order.''

(10) *Conflicts of interest.* (i) A guaranty agency shall maintain and enforce written standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements. The standards of conduct must, at a minimum, require disclosure of financial or other interests and must mandate disinterested decision-making. The standards must provide for appropriate disciplinary actions to be applied for violations of the standards by employees, officers, directors, trustees, or agents of the guaranty agency, and must include provisions to—

(A) Prohibit any employee, officer, director, trustee, or agent from participating in the selection, award, or decision-making related to the administration of a contract or agreement supported by the reserve fund described in paragraph (a) of this section, if that participation would create a conflict of interest. Such a conflict would arise if the employee, officer, director, trustee, or agent, or any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of those parties has a financial or ownership interest in the organization selected for an award or would benefit from the decision made in the administration of the contract or agreement. The prohibitions described in this paragraph do not apply to employees of a State agency covered by codes of conduct established under State law;

(B) Ensure sufficient separation of responsibility and authority between its lender claims processing as a guaranty agency and its lending or loan servicing activities, or both, within the guaranty agency or between that agency and one or more affiliates, including independence in direct reporting requirements and such management and systems controls as may be necessary to demonstrate, in the independent audit required under § 682.410(b)(1), that claims filed by another arm of the guaranty agency or by an affiliate of that agency receive no more favorable treatment than that accorded the claims filed by a lender or servicer that is not an affiliate or part of the guaranty agency; and

(C) Prohibit the employees, officers, directors, trustees, and agents of the guaranty agency, his or her partner, or any member of his or her immediate family, from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to agreements, except that nominal and unsolicited gratuities, favors, or items may be accepted.

(ii) *Guaranty agency restructuring.* If the Secretary determines that action is necessary to protect the Federal fiscal interest because of an agency's failure to meet the requirements of § 682.410(b)(10)(i), the Secretary may require the agency to comply with any additional measures that the Secretary believes are appropriate, including the total divestiture of the agency's non-FFEL functions and the agency's interests in any affiliated organization.

(c) *Enforcement requirements.* A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of FFEL loans

held by the lender and guaranteed by the agency in the preceding year—

(*1*) Equaled or exceeded two percent of the total of all loans guaranteed by the agency;

(*2*) Was one of the ten largest lenders whose loans were guaranteed by the agency; or

(*3*) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor, and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each school that participated in the guaranty agency's program, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, that includes FFEL Program loans, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate of over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(i)(A)–(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(5) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(6) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(7) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(8) Promptly notifying the Secretary of—

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or title IV eligibility of a school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or title IV eligibility of a school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(9) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(10) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a school that participated in the FFEL Program or a holder of loans participating in the program is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087, 1091a, and 1099)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.410, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 81 FR 76080, Nov. 1, 2016, § 682.410 was amended in paragraph (b)(4) by adding, after the words ''to the lender'', the words and punctuation '', but shall not capitalize any unpaid interest thereafter'' and by adding paragraph (b)(6)(viii), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(6) * * *

(viii) Upon notification by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k), the guaranty agency must suspend all collection activities on the affected loan for the period designated by the Secretary.

* * * * *

§ 682.411 Lender due diligence in collecting guaranty agency loans.

(a) *General.* In the event of delinquency on an FFEL Program loan, the lender must engage in at least the collection efforts described in paragraphs (c) through (n) of this section, except that in the case of a loan made to a borrower who is incarcerated, residing outside a State, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort required by this section.

(b) *Delinquency.* (1) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment that is not later made. The due date of the first payment is established by the lender but must occur by the deadlines specified in § 682.209(a) or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in § 682.209(a)(2)(v) and (a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment that is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(2) At no point during the periods specified in paragraphs (c), (d), and (e) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (j) of this section, of more than 45 days (60 days in the case of a transfer).

(3) As part of one of the collection activities provided for in this section, the lender must provide the borrower with

information on the availability of the Student Loan Ombudsman's office.

(c) *1–15 days delinquent.* Except in the case in which a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender or servicer contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequently than monthly).* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment, income-based repayment and loan consolidation, and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that, if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to each nationwide consumer reporting agency, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower or to garnish the borrower's wages, or to assign the loan to the Federal Government for litigation against the borrower.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone during this period if the loan is 91–120 days delinquent (121–180 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance.

(4) A lender need not attempt to contact by telephone any borrower who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(i) A payment on the loan;

(ii) A correct address or correct telephone number for the borrower;

(iii) A dishonored check received from the drawee as a payment on the loan; or

(iv) The expiration of an authorized deferment or forbearance.

(e) *181–270 days delinquent (241–330 days delinquent for a loan repayable in installments less frequently than monthly).* During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

(f) *Final demand.* On or after the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to each nationwide consumer reporting agency. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(g) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (m) of this section, the lender is excused from any further efforts to contact the borrower by telephone, unless the borrower's number is obtained before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(h) *Skip-tracing.* (1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity, identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender must discontinue the collection efforts described in paragraphs (c) through (f) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (h)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (f) and (l)(1) through (l)(3) and (l)(5) of this section unless it receives communication indicating the borrower's address before the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to the ''borrower'' understood to mean endorser, reference, relative, individual, or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(i) *Default aversion assistance.* Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan.

(j) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) Default.

(k) *Transfer.* For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(l) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c), (d), (e), or (f) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (h)(1) or (m)(1)(iii) of this section, to locate a borrower whose correct address or telephone number is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(m) *Diligent effort for telephone contact.* (1) For purposes of this section, the term *diligent effort* with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (m)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication indicating the borrower's current telephone number before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(3) The activities specified by paragraph (m)(1) (i) or (ii) of this section (with references to ''the borrower'' understood to mean endorser, reference, relative, or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative, or individual identified on the borrower's most recent loan application or most recent school certification.

(n) *Due diligence for endorsers.* (1) Before filing a default claim on a loan with an endorser, the lender must—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to ''the borrower'' understood to mean the endorser).

(2) On or after the 241st day of delinquency (the 301st day for loans payable

in less frequent installments than monthly) the lender must send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to each nationwide consumer reporting agency. The lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (n)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(o) *Preemption.* The provisions of this section—

(1) Preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section; and

(2) Do not preempt provisions of the Fair Credit Reporting Act that provide relief to a borrower while the lender determines the legal enforceability of a loan when the lender receives a valid identity theft report or notification from a consumer reporting agency that information furnished is a result of an alleged identity theft as defined in § 682.402(e)(14).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087)

[64 FR 58630, Oct. 29, 1999, as amended at 64 FR 58965, Nov. 1, 1999; 72 FR 62006, Nov. 1, 2007; 73 FR 63254, Oct. 23, 2008; 78 FR 65820, Nov. 1, 2013]

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(f) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the

loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Approved by the Office of Management and Budget under control number 1840–0538)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 60 FR 61757, Dec. 1, 1995; 64 FR 58632, Oct. 29, 1999; 78 FR 65820, Nov. 1, 2013]

§ 682.413 Remedial actions.

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)–(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The lender has not repaid in full the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability;

(B) The lender has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the lender by offsetting the lender's bill to the Secretary for interest benefits or special allowance, if—

(*1*) The bill is submitted after the 30 day period specified in paragraph (a)(3)(ii)(A) of this section has passed; and

(*2*) The lender has not paid, or made satisfactory arrangements to pay, the liability.

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of § 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of § 682.410.

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine on a third-party servicer, a repeated mechanical systemic unintentional error shall be counted as one violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans for which the required lender verification certification is not available.

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation loan amounts attributed to Consolidation loans as specified in § 682.413(c)(1)(vi) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The guaranty agency has not repaid in full the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability;

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the guaranty agency by offsetting the guaranty agency's first reinsurance claim to the Secretary, if—

(*1*) The claim is submitted after the 30-day period specified in paragraph (c)(3)(ii)(A) of this section has passed; and

(*2*) The guaranty agency has not paid, or made satisfactory arrangements to pay, the liability.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to ''the institution'' in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

(e)(1)(i) The Secretary's decision to require repayment of funds, withhold funds, or to limit or suspend a lender, guaranty agency, or third party servicer from participation in the FFEL Program or to terminate a lender or third party from participation in the FFEL Program does not become final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard. The hearing is at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests the hearing.

(ii) The Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998 does not become final until the Secretary provides the agency with written notice of the intended action and provides an opportunity for a hearing on the record.

(2)(i) The Secretary may withhold payments from an agency or suspend

an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in §682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20–30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)–(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of §682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of section 428(b)(3) of the Act, if the Secretary finds that the guaranty agency provided or offered the prohibited payments or activities, the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

NOTE TO §682.413: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1, 1097)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22454, Apr. 29, 1994; 59 FR 61190, Nov. 29, 1994; 61 FR 60487, Nov. 27, 1996; 64 FR 18981, Apr. 16, 1999; 64 FR 58632, Oct. 29, 1999; 72 FR 62006, Nov. 1, 2007; 78 FR 65820, Nov. 1, 2013]

§682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a consumer reporting agency regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for default aversion assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond these minimum periods.

(3) A guaranty agency shall retain a copy of the audit report required under §682.410(b) for not less than five years after the report is issued.

(4)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(4)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application if a separate application was provided to the lender;

(B) A copy of the signed promissory note;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a consumer reporting agency regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for default aversion assistance on the loan;

(K) Documentation of any MPN confirmation process or processes; and

(L) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report required under §682.305(c) for not less than five years after the report is issued.

(5)(i) A guaranty agency or lender may store the records specified in paragraphs (a)(4)(ii)(C)–(L) of this section in accordance with 34 CFR 668.24(d)(3)(i) through (iv).

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

(iii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

(iv) If a lender made a loan based on an electronically signed MPN, the holder of the original electronically signed MPN must retain that original MPN for at least 3 years after all the

loans made on the MPN have been satisfied.

(6)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the guaranty agency and the lender that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. The guaranty agency or lender must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the guaranty agency or lender, if necessary to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification described in paragraph (a)(6)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flow chart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the lender's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The guaranty agency must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by the lender is not satisfied, the holder of the original electronically signed promissory note is responsible for ensuring that all parties entitled to access to the electronic loan record, including the guaranty agency and the Secretary, have full and complete access to the electronic record.

(b) *Reports.* A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) State or private nonprofit lenders.

(ii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iii) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for lenders;

(ii) Its procedures for the limitation, suspension, and termination of lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or

terminate the participation of a lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) A report to the Secretary of the borrower's enrollment and loan status information, or any Title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* (1) For purposes of examination of records, references to an institution in 34 CFR 668.24(f) (1) through (3) shall mean a guaranty agency or its agent.

(2) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 59 FR 22455, 22489, Apr. 29, 1994; 59 FR 33358, June 28, 1994; 59 FR 34964, July 7, 1994; 61 FR 60493, Nov. 27, 1996; 64 FR 58632, Oct. 29, 1999; 64 FR 58963, Nov. 1, 1999; 65 FR 65621, Nov. 1, 2000; 66 FR 34764, June 29, 2001; 67 FR 67080, Nov. 1, 2002; 72 FR 62007, Nov. 1, 2007; 78 FR 65820, Nov. 1, 2013]

§ 682.415 [Reserved]

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) *Standards for administrative capability.* A third-party servicer is considered administratively responsible if it—

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL programs in accordance with FFEL programs regulations;

(2) Has business systems including combined automated and manual systems, that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL programs regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) *Standards of financial responsibility.* The Secretary applies the provisions of 34 CFR 668.15(b) (1)–(4) and (6)–(9) to determine that a third-party servicer is financially responsible under this part. References to ''the institution'' in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) *Special review of third-party servicer.* (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer, the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) *Past performance of third-party servicer or persons affiliated with servicer.* Notwithstanding paragraphs (b) and (c) of this section, a third-party servicer is not financially responsible if—

(1)(i) The servicer; its owner, majority shareholder, or chief executive officer; any person employed by the

servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of an entity with which the servicer contracts where that person, entity, or officer or employee of the entity acts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds, unless—

(A) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(B) The persons who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(C) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or administrative or judicial determination; or

(ii) The servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is—

(A) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Engaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as those sections are adopted at 2 CFR 3485.12 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer's participation in title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 668.15, over the servicer.

(e) *Independent audits.* (1) A third-party servicer shall arrange for an independent audit of its administration of the FFELP loan portfolio unless—

(i) The servicer contracts with only one lender or guaranty agency; and

(ii) The audit of that lender's or guaranty agency's FFEL programs involves every aspect of the servicer's administration of those FFEL programs.

(2) The audit must—

(i) Examine the servicer's compliance with the Act and applicable regulations;

(ii) Examine the servicer's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit of the servicer's first full fiscal year beginning on or after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) A third-party servicer must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[3]

[3] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, *Continued*

(4) [Reserved]

(f) *Contract responsibilities.* A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in § 682.414(a)(4)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22455, Apr. 29, 1994; 59 FR 34964, July 7, 1994; 66 FR 34764, June 29, 2001; 68 FR 66615, Nov. 26, 2003; 77 FR 18679, Mar. 28, 2012; 78 FR 65820, Nov. 1, 2013; 79 FR 76105, Dec. 19, 2014]

§ 682.417 Determination of Federal funds or assets to be returned.

(a) *General.* The procedures described in this section apply to a determination by the Secretary that—

(1) A guaranty agency must return to the Secretary a portion of its Federal Fund that the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of Federal funds or assets within the meaning of section 422(g)(1) of the Act held by or under the control of any other entity that the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or that are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) *Return of unnecessary Federal funds.* (1) The Secretary may initiate a process to recover unnecessary Federal funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's Federal Fund ratio under § 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary Federal funds, the Secretary requires the return of a portion of the Federal funds that the Secretary determines will permit the agency to—

(i) Have a Federal Fund ratio of at least 2.0 percent under § 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum Federal Fund requirements under § 682.410(a)(10) and retain sufficient additional Federal funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of Federal funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections.

(ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency must provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of Federal funds needed by the agency on the basis of other information.

(c) *Notice.* (1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its Federal funds, or to direct the return of Federal funds or assets subject to return, by sending

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apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice—

(i) Informs the guaranty agency of the Secretary's determination that Federal funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of Federal funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the Federal funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination, and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the Federal funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of Federal funds or assets held by or under the control of another entity, the guaranty agency must ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency must also comply with all other applicable regulations relating to the use of Federal funds and assets.

(d) *Appeal.* (1) A guaranty agency may appeal the Secretary's determination that Federal funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of Federal funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency must submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that Federal funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the determination or a subordinate of that official.

(4) In an appeal of the Secretary's determination, the guaranty agency must—

(i) State the reasons the guaranty agency believes the Federal funds or assets need not be returned;

(ii) Identify any evidence on which the guaranty agency bases its position that Federal funds or assets need not be returned;

(iii) Include copies of the documents that contain this evidence;

(iv) Include any arguments that the guaranty agency believes support its position that Federal funds or assets need not be returned; and

(v) Identify the steps taken by the guaranty agency to comply with the requirements referred to in paragraph (c)(2)(v) of this section.

(5)(i) In its appeal, the guaranty agency may request the opportunity to make an oral argument to the deciding official for the purpose of clarifying any issues raised by the appeal. The deciding official provides this opportunity promptly after the expiration of the period referred to in paragraph (d)(2) of this section.

(ii) The agency may not submit new evidence at or after the oral argument unless the deciding official determines otherwise. A transcript of the oral argument is made a part of the record of the appeal and is promptly provided to the agency.

(6) The guaranty agency has the burden of production and the burden of persuading the deciding official that the Secretary's determination should be modified or withdrawn.

(e) *Third-party participation.* (1) If the Secretary issues a determination under paragraph (a)(1) of this section, the Secretary promptly publishes a notice in the FEDERAL REGISTER announcing the portion of the Federal Fund to be returned by the agency and providing interested persons an opportunity to submit written information relating to the determination within 30 days after the date of publication. The Secretary publishes the notice no earlier than five days after the agency receives a copy of the determination.

(2) If the guaranty agency to which the determination relates files a notice of appeal of the determination, the deciding official may consider any information submitted in response to the FEDERAL REGISTER notice. All information submitted by a third party is available for inspection and copying at the offices of the Department of Education in Washington, D.C., during normal business hours.

(f) *Adverse information.* If the deciding official considers information in addition to the evidence described in the notice of the Secretary's determination that is adverse to the guaranty agency's position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) *Decision.* (1) The deciding official issues a written decision on the guaranty agency's appeal within 45 days of the date on which the information described in paragraphs (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return Federal funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary's determination to require the return of Federal funds or assets until the deciding official issues a decision.

(3) The deciding official's written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary's determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) *Collection of Federal funds or assets.* (1) If the deciding official's final decision requires the guaranty agency to return Federal funds, or requires the guaranty agency to require the return of Federal funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the Federal funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

(Approved by the Office of Management and Budget under control number 1845–0020)

[64 FR 58632, Oct. 29, 1999]

§ 682.418 [Reserved]

§ 682.419 Guaranty agency Federal Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain a Federal Student Loan Reserve Fund (referred to as the ''Federal Fund'') to be used only as permitted under paragraph (c) of this section. The assets of the Federal Fund and the earnings on those assets are, at all times, the property of the United States. The guaranty agency must exercise the level of care required of a fiduciary charged with the duty of protecting, investing, and administering the money of others.

(b) *Deposits.* The agency must deposit into the Federal Fund—

(1) All funds, securities, and other liquid assets of the reserve fund that existed under § 682.410;

(2) The total amount of insurance premiums or Federal default fees collected;

(3) Federal payments for default, bankruptcy, death, disability, closed school, false certification, and other claims;

(4) Federal payments for supplemental preclaims assistance activities performed before October 1, 1998;

(5) 70 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, within 48 hours of receipt of those funds, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) *Uses.* A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;

(3) To transfer account maintenance fees to the agency's Operating Fund, if directed by the Secretary;

(4) To refund payments made by or on behalf of a borrower on a loan that has been discharged in accordance with § 682.402;

(5) To pay the Secretary's share of borrower payments, in accordance with § 682.404(g);

(6) For transfers to the agency's Operating Fund, pursuant to section 422A(f) of the Act;

(7) To refund insurance premiums or Federal default fees related to loans cancelled or refunded, in whole or in part;

(8) To return to the Secretary portions of the Federal Fund required to be returned by the Act; and

(9) For any other purpose authorized by the Secretary.

(d) *Prohibition against prepayment.* A guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

(e) *Minimum Federal Fund level.* The guaranty agency must maintain a minimum Federal Fund level equal to at least 0.25 percent of its insured original principal amount of loans outstanding.

(f) *Definitions.* For purposes of this section—

(1) *Federal Fund level* means the total of Federal Fund assets identified in paragraph (b) of this section plus the amount of funds transferred from the Federal Fund that are in the Operating Fund, using an accrual basis of accounting.

(2) *Original principal amount of loans outstanding means*—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

(Authority: 20 U.S.C. 1072–1)

[64 FR 58634, Oct. 29, 1999, as amended at 71 FR 45708, Aug. 9, 2006; 78 FR 65820, Nov. 1, 2013]

§§ 682.420–682.422 [Reserved]

§ 682.423 Guaranty agency Operating Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account

separate from the Federal Fund. Except for funds that may have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;

(7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and

(8) Other receipts as authorized by the Secretary.

(c) *Uses.* A guaranty agency may use the Operating Fund for—

(1) Guaranty agency-related activities, including—

(i) Application processing;

(ii) Loan disbursement;

(iii) Enrollment and repayment status management;

(iv) Default aversion activities;

(v) Default collection activities;

(vi) School and lender training;

(vii) Financial aid awareness and related outreach activities; and

(viii) Compliance monitoring; and

(2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(Authority: 20 U.S.C. 1072–2)

[64 FR 58635, Oct. 29, 1999, as amended at 78 FR 65820, Nov. 1, 2013]

Subpart E [Reserved]

Subpart F—Requirements, Standards, and Payments for Schools That Participated in the FFEL Program

§§ 682.600–682.602 [Reserved]

§ 682.603 Certification by a school that participated in the FFEL Program in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made by the borrower and, in the case of a parent borrower of a PLUS loan, the student and the parent borrower.

(b) The information to be provided by the school about the borrower pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in section 428G of the Act.

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

(d) Before certifying a PLUS loan application for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which the borrower is eligible, the school must—

(1) Notify the graduate or professional student borrower of the maximum Stafford loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment; and

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

(e) A school may not certify a Stafford or PLUS loan, or a combination of loans, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 682.204; or

(2) Exceeds the student's estimated cost of attendance for the period of enrollment, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Subsidized Stafford loan, the borrower's expected family contribution for that period.

(f)(1)(i) The minimum period of enrollment for which a school may certify a loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single term (e.g., a semester or quarter); or

(B) Except as provided in paragraphs (f)(1)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may certify a loan for the remaining portion of the program or academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may certify a loan for the remainder of the academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender;

(3) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided that—

(i) The determination is made on a case-by-case basis; and

(ii) The documentation supporting the determination is retained in the student's file; and

(4) May not, under paragraph (f)(1), (2), and (3) of this section, engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(g) The maximum period for which a school may certify a loan application is—

(1) Generally an academic year, as defined by 34 CFR 668.3, except that a guaranty agency may allow a school to use a longer period of time, corresponding to the period to which the agency applies the annual loan limits; or

(2) For a defaulted borrower who has regained eligibility under § 682.401(b)(1),

the academic year in which the borrower regained eligibility.

(h) In certifying a Stafford or Unsubsidized Stafford loan amount in accordance with § 682.204—

(1) A program of study must be considered at least one full academic year if—

(i) The number of weeks of instructional time is at least 30 weeks; and

(ii) The number of clock hours is a least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36;

(2) A program of study must be considered two-thirds (2/3) of an academic year if—

(i) The number of weeks of instructional time is at least 20 weeks; and

(ii) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24;

(3) A program of study must be considered one-third (⅓) of an academic year if—

(i) The number of weeks of instructional time is at least 10 weeks; and

(ii) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12; and

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(i)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(j)(1) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than—

(i) 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs; or

(ii) October 1, 2002.

(2) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs.

(k) A school may not assess the borrower, or the student in the case of a parent PLUS loan, a fee for the completion or certification of any FFEL

Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

(l) Pursuant to paragraph (b)(3) of this section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in 34 CFR 668.167.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 59 FR 33358, June 28, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 61757, Dec. 1, 1995; 61 FR 60609, Nov. 29, 1996; 64 FR 18981, Apr. 16, 1999; 64 FR 58963, Nov. 1, 1999; 65 FR 65650, Nov. 1, 2000; 66 FR 34764, June 29, 2001; 67 FR 67080, Nov. 1, 2002; 68 FR 75429, Dec. 31, 2003; 71 FR 45709, Aug. 9, 2006; 72 FR 62007, 62031, Nov. 1, 2007; 78 FR 65820, Nov. 1, 2013]

§ 682.604 Required exit counseling for borrowers.

(a) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Stafford Loan borrower and graduate or professional student PLUS Loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must, within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required, ensure that exit counseling is provided through interactive electronic means, by mailing written counseling materials to the student borrower at the student borrower's last known address, or by sending written counseling materials to an email address provided by the student borrower that is not an email address associated with the school sending the counseling materials.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford loans, PLUS Loans, or student borrowers who have obtained both Stafford and PLUS loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options, including standard, graduated, extended, income sensitive and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

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

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

(A) The effects of consolidation on total interest to be paid, fees 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;

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

(D) That borrower benefit programs may vary among different lenders;

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

(vi) Explain to the borrower the use of a Master Promissory Note;

(vii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the borrower has assumed;

(viii) Emphasize to the student borrower that the full amount of the loan (other than a loan made or originated by the school) must be repaid in full even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

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

(x) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan, including forgiveness benefits or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program; 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) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(xii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office;

(xiii) Inform the student 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; and

(xiv) A general description of the types of tax benefits that may be available to borrowers.

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(4) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(5)(i) For students who have received both FFEL Program and Direct Loan Program loans for attendance at a school, the school's compliance with the exit counseling requirements in 34 CFR 685.304(b) satisfies the requirements of this section if the school ensures that the exit counseling also provides the borrower with the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of this section, and for students who have also received Direct Loan Program loans for attendance at the school, the requirements of 34 CFR 685.304(b).

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.604, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to

attend, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in § 668.22(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under § 668.22(b) or (c), as applicable for the purpose of reporting to the lender and the Secretary the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to a lender and the Secretary, a student's withdrawal date is the month, day and year of the withdrawal date.

(Approved by the Office of Management and Budget under control number 1845–0020)

[60 FR 61757, Dec. 1, 1995, as amended at 64 FR 58965, 59043, Nov. 1, 1999; 78 FR 65822, Nov. 1, 2013]

§ 682.606 [Reserved]

§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan upon the borrower's withdrawal. A school—

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or a return of title IV, HEA program funds to a lender on behalf of that student.

(b) *Allocation of a refund or returned title IV, HEA program funds.* In determining the portion of a refund or the return of title IV, HEA program funds upon a student's withdrawal for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school must follow the procedures established in part 668 for allocating a refund or return of title IV, HEA program funds.

(c) *Timely payment.* A school must pay a refund or a return of title IV, HEA program funds that is due in accordance with the timeframe in § 668.22(j).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

[64 FR 59043, Nov. 1, 1999]

§ 682.608 [Reserved]

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary also may require a school to purchase from the holder of a FFEL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school if, in

the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation.

(Authority: 20 U.S.C. 1077, 1078 , 1078–1, 1078–2, 1082, 1094)

§ 682.610 Administrative and fiscal requirements for schools that participated in the FFEL Program.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the record retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's required written authorization, if it was not provided in the loan application or MPN, to deliver the initial and subsequent disbursements of each FFEL Program loan; and

(6) Documentation of any MPN confirmation process or processes the school may have used.

(c) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date that the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 61 FR 60493, Nov. 27, 1996; 64 FR 58965, Nov. 1, 1999; 66 FR 34764, June 29, 2001; 78 FR 65822, Nov. 1, 2013]

§ 682.611 [Reserved]

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

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the

Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA prescribed under the FFEL programs. These regulations apply to lenders that participate only in a guaranty agency program, lenders that participate in the FFEL programs, and third-party servicers that administer aspects of a lender's FFELP portfolio. These regulations also govern the Secretary's disqualification of a lender from participation in the FFEL programs under section 432(h)(2) of the Act.

(b) This subpart does not apply—

(1)(i) To a determination that an organization fails to meet the definition of ''eligible lender'' in section 435(d)(1) of the Act or the definition of ''lender'' in § 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act; or

(ii) To a determination that an organization fails to meet the standards in § 682.416; or

(2) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22456, Apr. 29, 1994; 78 FR 65822, Nov. 1, 2013]

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification. The removal of a lender's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender by a guaranty agency.

Limitation. The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension. The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination. (1) The removal of a lender's eligibility for an indefinite period of time—

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22457, Apr. 29, 1994; 78 FR 65822, Nov. 1, 2013]

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities or rights to benefits and claim payments that are based on the lender's prior participation in the program, except as provided in § 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may purchase or hold under the FFEL Program; or

(2) Other reasonable requirements or conditions, including those described in § 682.709.

(c) A limitation imposes on a third-party servicer—

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22457, Apr. 29, 1994; 78 FR 65822, Nov. 1, 2013]

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22457, Apr. 29, 1994]

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to withhold payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA pertaining to the lender's portfolio of loans;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or

servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22457, Apr. 29, 1994; 78 FR 65822, Nov. 1, 2013]

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[59 FR 22457, Apr. 29, 1994, as amended at 60 FR 33058, June 26, 1995; 66 FR 34764, June 29, 2001; 68 FR 66615, Nov. 26, 2003; 72 FR 62009, Nov. 1, 2007; 78 FR 65822, Nov. 1, 2013]

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) In a termination action against a lender or third-party servicer based on a debarment under Executive Order 12549 or under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 that does not meet the standards described in 2 CFR 3485.612(d), the presiding official finds that the debarment constitutes prima facie evidence that cause for debarment and termination under this subpart exists.

(8) The initial decision of the presiding officer is mailed to the lender or servicer.

(9) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(10) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[59 FR 22458, Apr. 29, 1994, as amended at 60 FR 33058, June 25, 1995; 72 FR 62009, Nov. 1, 2007; 77 FR 18679, Mar. 28, 2012; 78 FR 65822, Nov. 1, 2013]

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(10)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing

the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22458, Apr. 29, 1994; 66 FR 34765, June 29, 2001]

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22459, Apr. 29, 1994]

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(d) In any action under this part based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or the hearing official finds that the lender provided or offered the payments or activities described in paragraph (5)(i) of the definition of ''lender'' in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

(Authority: 20 U.S.C. 1080, 1082, 1094)

[59 FR 22459, Apr. 29, 1994, as amended at 78 FR 65822, Nov. 1, 2013]

§ 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22459, Apr. 29, 1994]

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the procedures of this subpart may request reinstatement of its eligibility after the later of—

(1) Eighteen months from the effective date of the termination; or

(2) The expiration of the period of debarment under Executive Order 12459 or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

(b) The request must be in writing and must show that—

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

(c) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(d)(1) If the Secretary denies the lender's or servicer's request or allows reinstatement subject to limitations, the lender or servicer, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender or third-party servicer whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (c)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 22459, Apr. 29, 1994; 59 FR 34964, July 7, 1994; 60 FR 33058, June 26, 1995; 64 FR 58965, Nov. 1, 1999; 78 FR 65822, Nov. 1, 2013]

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate

the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guaranty agency's action is final, e.g, the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (i) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (i) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (i) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 64 FR 58965, Nov. 1, 1999; 78 FR 65822, Nov. 1, 2013]

§ 682.713 [Reserved]

Subpart H [Reserved]

APPENDIXES A–C TO PART 682 [RESERVED]

APPENDIX D TO PART 682—POLICY FOR WAIVING THE SECRETARY'S RIGHT TO RECOVER OR REFUSE TO PAY INTEREST BENEFITS, SPECIAL ALLOWANCE, AND REINSURANCE ON STAFFORD, PLUS, SUPPLEMENTAL LOANS FOR STUDENTS, AND CONSOLIDATION PROGRAM LOANS INVOLVING LENDERS' VIOLATIONS OF FEDERAL REGULATIONS PERTAINING TO DUE DILIGENCE IN COLLECTION OR TIMELY FILING OF CLAIMS [BULLETIN 88–G–138]

NOTE: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline. For the purpose of determining the 3-year deadline, reinsurance is lost on the later of (a) 3 years from the last date the claim could have been filed for claim payment with the guaranty agency for a claim that was not filed; or (b) 3 years from the date the guaranty agency rejected the claim, for a claim that was filed. These deadlines are extended by periods during which collection activities are suspended due to the filing of a bankruptcy petition.

INTRODUCTION

(1) This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of the Secretary's rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Program.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

(2) The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Program. As a part of this effort, the Secretary published final regulations on November 10, 1986, requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, §682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. *See* 34 CFR 682.406(a)(3), (a)(5), (a)(6), and 682.413(b). The regulations also specify that a lender must comply with §682.411 and with the applicable filing deadline as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vii), 682.302(d)(1)(iv), 682.413(a)(1).

(3) The Department has received inquiries regarding the procedures by which a lender may cure a violation of §682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in §682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. *See* §§682.406(a)(7) and 682.413(b). As §§682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all those requirements must be submitted to the Secretary for review and approval under 34 CFR 682.401(c).

(4) References throughout this letter to ''due diligence and timely filing'' rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. SCOPE

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. DUTY OF A GUARANTY AGENCY TO ENFORCE ITS STANDARDS

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guaranty agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. DUE DILIGENCE

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 270 days for loans payable in monthly installments, or for 330 days for loans payable in less frequent installments. The 270/330-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment 3 months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on December 27th, when the April payment becomes 270 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

NOTE: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. TIMELY FILING

(1) The 90-day filing period applicable to FFEL Program default claims is described in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 270/330-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 360th day of delinquency (270-day default period plus 90-day filing period) if the borrower brings the account less than 270 days

delinquent before the 360th day. Thus, in the above example, if the borrower makes the April 1st payment on December 28th, that payment makes the loan 241 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 270 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 270 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if those payments are sufficient to make the loan less than 270 days delinquent.

(2) Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a full payment would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a full payment only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Earliest unexcused violation means:

(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to three or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the date of default.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. Reinstatement with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

Gap in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has ''skipped'' and the lender's first skip-tracing activity.

NOTE: The concept of ''gap'' is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on or after November 10, 1986. For those loans, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in §682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. *General*

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement. While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules and in cases where the best interests of the United States otherwise require strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority. The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

a. The guaranty agency and lender must ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the ''retrospective period'' described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1., by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

b. The guaranty agency, on or before October 1, 1988, must repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the ''retrospective period'' described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day or 270/330-day default period (as applicable) that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence or timely filing requirements or both. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guarantors must review the due diligence for the 180/240 or 270/330-day period (as applicable) prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on ''Cured'' Claims. For any loan involving any violation of the due diligence or timely filing rules for which a ''cure'' is required under section I.C. or I.E., for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on

the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in those cases, see section I.E.1.c.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made. The special provisions for transfers apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988 based on due dates prior to October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

3. Post 1998 Amendments. For due diligence violations based on due dates on or after October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest,

interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make this request by the 330th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1. or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1. for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations.

1. Cures. In the case of a loan involving violations described in section I.C.2.d. or I.C.3.d., the lender may utilize either of the two procedures described in section I.D.1.a or I.D.1.b. for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the repayment period limitations set out in 34 CFR 682.209(a)(8) and 682.209(h)(2); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current as of Date of Cure. On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., reinsurance coverage on the loan is reinstated, and the borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender must then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims.

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c. or I.C.3.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (*See* section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed. If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender must again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower must be deemed by the lender to be

current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender must deem the borrower to be in default. The lender must then file a default claim on the loan, accompanied by acceptable evidence of location (*see* section I.E.1.d.), within 30 days after the end of the 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of those loans, on unpaid interest as provided in section I.B.7., and for reimbursement of eligible supplemental preclaims assistance costs. In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*See* 34 CFR 682.402(g)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period. The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§682.402(g)(2)(iv)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender must return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim unless the status has changed due solely to passage of time. In the latter case, the lender must place the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower's account current as provided in §682.211(f)(4) and §682.402(f)(5)(ii) and (f)(6). The Secretary will not reimburse the guaranty agency for interest for the period beginning on the filing deadline for the bankruptcy claim and ending on the date the loan becomes eligible again for reinsurance. Reinsurance is reinstated on the date the bankruptcy action concludes and the loan is not

discharged or on the date a previous discharge is reversed.

II. *Due Date of First Payment.* Section 682.411(b)(1) refers to the ''due date of the first missed payment not later made'' as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on an FFEL Program loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment (unless the lender establishes the first day of repayment under §682.209(a)(3)(ii)(E)).

1. In cases where the lender learns that the borrower has entered the repayment period after the fact, current §682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun (''the notice'') as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice (unless the lender establishes the first day of repayment under §682.209(a)(3)(ii)(E)). In keeping with the 5-day tolerance permitted under section I.C.2.a., for the ''prospective period,'' or section I.C.3.a., for the ''post 1998 amendment period,'' a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by §682.411(c) to be sent within the first 30 days of delinquency and will thus have committed two violations of more than five days of that rule.

2. If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., that only violations occurring during the most recent 180 or 270 days (as applicable) of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

Please Note: References to the ''65th day after receipt of the notice'' and ''66th day'' in the preceding paragraphs should be amended to read ''95th day'' and ''96th day'' respectively for lenders subject to §682.209(a)(3)(ii)(E).

III. *Questions and Answers*

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guaranty agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions follow.

NOTE: The answer to questions 1 and 4 are applicable only to loans subject to §682.411 of the FFEL and PLUS program regulations published on or after November 10, 1986.

1. Q: Section 682.411 of the program regulations requires the lender to make ''diligent efforts to contact the borrower by telephone'' during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the ''diligent efforts'' requirement for any of the 30-day delinquency periods described in the rule. However, the ''diligent efforts'' requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

2. Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

4. Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with §682.411, commencing with the first 30-day delinquency period described in §682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[64 FR 58636, Oct. 29, 1999, as amended at 66 FR 34765, June 29, 2001; 78 FR 65823, Nov. 1, 2013]

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

SOURCE: 59 FR 61690, Dec. 1, 1994, unless otherwise noted.

Subpart A—Purpose and Scope

§685.100 The William D. Ford Federal Direct Loan Program.

(a) Under the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1)(i) Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program), which provides loans to undergraduate, graduate, and professional students. Loans made under this program are referred to as Direct Subsidized Loans. Except as provided in paragraph (a)(1)(ii) of this section, the Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

(ii) The Secretary does not subsidize the interest that accrues during the grace period on any Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized Loan Program), which provides loans to undergraduate, graduate and professional students. Loans made under this program are referred to as Direct Unsubsidized Loans. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program (Direct PLUS Loan Program), which provides loans to parents of dependent students and to graduate or professional students. Loans made under this program are referred to as Direct PLUS Loans. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program (Direct Consolidation Loan Program), which provides loans to borrowers to consolidate certain Federal educational loans. Loans made under this program are referred to as Direct Consolidation Loans.

(b) The Secretary makes a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan only to a student or a parent of a student enrolled in a school that participates in the Direct Loan Program.

(c) The Secretary makes a Direct Consolidation Loan only to a borrower who is consolidating at least one loan made under the Direct Loan Program or the Federal Family Education Loan (FFEL) Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 71 FR 45709, Aug. 9, 2006; 78 FR 65823, Nov. 1, 2013]

§685.101 Participation in the Direct Loan Program.

(a) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of attendance at the school.

(b)(1) An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan and Direct Unsubsidized Loan programs.

(2) An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan programs, except that a graduate or professional student may not borrow under the Direct Subsidized Loan Program for any period of enrollment beginning on or after July 1, 2012.

(3) An eligible parent of an eligible dependent student enrolled at a school

participating in the Direct Loan Program may borrow under the Direct PLUS Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

[78 FR 65823, Nov. 1, 2013]

§ 685.102 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Disbursement
Eligible program
Eligible student
Enrolled
Expected family contribution (EFC)
Federal Consolidation Loan Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Full-time student
Graduate or professional student
Half-time student
Independent student
One-third of an academic year
Parent
Payment period
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Two-thirds of an academic year
Undergraduate student
U.S. citizen or national
William D. Ford Federal Direct Loan (Direct Loan) Program

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Correspondence course
Credit hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Foreign institution
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Secretary
State

(b) The following definitions also apply to this part:

Act: The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Endorser: An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, net earnings from need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps).

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

(iii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to cover postsecondary education expenses;

(iv) Fellowships or assistantships, except non-need-based employment portions of such awards;

(v) Insurance programs for the student's education; and

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized and Unsubsidized Loans, and Federal PLUS or Direct PLUS Loans.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution (EFC), including the amounts of any TEACH

Grants, unsubsidized Federal Stafford Loans or Direct Unsubsidized Loans, Federal PLUS or Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student's EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined;

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(iv) Any portion of the estimated financial assistance described in paragraph (1) of this definition that is included in the calculation of the student's EFC;

(v) Non-need-based employment earnings;

(vi) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific amount of the cost of attendance and that component is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both;

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

Federal Direct Consolidation Loan Program (Direct Consolidation Loan Program): (1) A loan program authorized by title IV, part D of the Act that provides loans to borrowers who consolidate certain Federal educational loan(s), and one of the components of the Direct Loan Program. Loans made under this program are referred to as Direct Consolidation Loans.

(2) The term ''Direct Subsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to certain subsidized title IV education loans that were repaid by the consolidation loan. Interest is not charged to the borrower during deferment periods, or, for a borrower whose consolidation application was received before July 1, 2006, during in-school and grace periods.

(3) The term ''Direct Unsubsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to unsubsidized title IV education loans, certain subsidized title IV education loans, and certain other Federal education loans that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.

(4) In the case of a Direct Consolidation Loan that entered repayment prior to July 1, 2006, the term ''Direct PLUS Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to Direct PLUS Loans, Direct PLUS Consolidation Loans, Federal PLUS Loans, and Parent Loans for Undergraduate Students that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.

Federal Direct PLUS Program (Direct PLUS Loan Program): A loan program authorized by title IV, Part D of the Act that is one of the components of the Federal Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct PLUS Loans.

Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program): A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period, except that the Secretary does not subsidize the interest that accrues during the grace period on a loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014. Loans made under this program are referred to as Direct Subsidized Loans. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized Loan Program): A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct Unsubsidized Loans.

Federal Insured Student Loan Program: The loan program authorized by title IV, part B of the Act under which the Secretary directly insures lenders against losses.

Federal Stafford Loan Program: The loan program authorized by title IV, part B of the Act which encouraged the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

Grace period: A six-month period that begins on the day after a Direct Subsidized Loan borrower, a Direct Unsubsidized Loan borrower, or, in some cases, a Direct Consolidation Loan borrower whose consolidation application was received before July 1, 2006, ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Guaranty agency: A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Holder: The entity that owns a loan. For a FFEL Program loan, the term ''holder'' refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Lender: As used in this part, the term ''lender'' has the meaning specified in

section 435(d) of the Act for purposes of the FFEL Program.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be made;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

(4) Unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent borrower for attendance at that school. If a school is not authorized by the Secretary for multi-year use of the MPN, a student or parent borrower must sign a new MPN for each academic year.

Nationwide consumer reporting agency: A consumer reporting agency as defined in 15 U.S.C. 1681a(p).

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

Satisfactory repayment arrangement: (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under § 685.220(d)(1)(ii)(A)(*3*)—

(i) The making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan prior to consolidation; or

(ii) Agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221.

(3) For the purpose of paragraph (2)(i) of this definition, the required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. ''On-time'' means a payment made within 20 days of the scheduled due date, and voluntary payments are payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(4) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Totally and permanently disabled: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 685.102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 685.103 Applicability of subparts.

(a) Subpart A contains general provisions regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions regarding borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements regarding schools in the Direct Loan Program.

(d) Subpart D contains provisions regarding school eligibility for participation and origination in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—Borrower Provisions

§ 685.200 Borrower eligibility.

(a) *Student Direct Subsidized or Direct Unsubsidized borrower.* (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the period of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was discharged due to total and permanent disability, the student—

(A) In the case of a borrower whose prior loan under title IV of the Act or TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower—

(*1*) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(*2*) Signs a statement acknowledging that neither the new Direct Loan the borrower receives nor any previously discharged loan on which the borrower is required to resume payment in accordance with paragraph (a)(1)(iv)(B) of this section can be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates;

(B) In the case of a borrower who receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan; and

(C) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010—

(*1*) The suspension of collection activity on the prior loan has been lifted;

(*2*) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(*1*) of this section;

(*3*) The borrower signs a statement acknowledging that neither the new Direct Loan the borrower receives nor the loan that has been conditionally discharged prior to a final determination of total and permanent disability can be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(*4*) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) In the case of a student who was enrolled in a program of study prior to July 1, 2012 and who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR 668.32(e)(2), (3), (4), or (5).

(2)(i) A Direct Subsidized Loan borrower must—

(A) Demonstrate financial need in accordance with title IV, part F of the Act; and

(B) In the case of a first-time borrower as defined in paragraph (f)(1)(i) of this section, not have met or exceeded the limitations on the receipt of Direct Subsidized Loans described in paragraph (f) of this section.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need as that term is used in paragraph (a)(2)(i)(A) of this section if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Student PLUS borrower.* (1) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(2) The student meets the requirements for an eligible student under 34 CFR part 668.

(3) The student meets the requirements of paragraphs (a)(1)(iv) and (a)(1)(v) of this section, if applicable.

(4) The student has received a determination of his or her annual loan maximum eligibility under the Direct Unsubsidized Loan Program and, for periods of enrollment beginning before July 1, 2012, the Direct Subsidized Loan Program; and

(5) The student meets the requirements that apply to a parent under paragraphs (c)(2)(viii)(A) through (G) of this section.

(c) *Parent PLUS borrower*—(1) *Definitions.* The following definitions apply to this paragraph (c):

(i) *Charged off* means a debt that a creditor has written off as a loss, but that is still subject to collection action.

(ii) *In collection* means a debt that has been placed with a collection agency by a creditor or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

(2) *Eligibility.* A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii) The parent has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(viii)(A) The parent—

(*1*) Does not have an adverse credit history;

(*2*) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history, and completes PLUS loan counseling offered by the Secretary; or

(*3*) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist and completes PLUS loan counseling offered by the Secretary.

(B) For purposes of this paragraph (c), an adverse credit history means that the parent—

(*1*) Has one or more debts with a total combined outstanding balance greater than $2,085, as may be adjusted by the Secretary in accordance with paragraphs (c)(2)(viii)(C) and (D) of this section, that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off, as defined in paragraph (c)(1) of this section, during the two years preceding the date of the credit report; or

(*2*) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) The Secretary increases the amount specified in paragraph (c)(2)(viii)(B)(*1*) of this section, or its inflation-adjusted equivalent, when the Secretary determines that an inflation adjustment to that amount would result in an increase of $100 or more.

(D) In making the inflation adjustment described in paragraph (c)(2)(viii)(C) of this section, the Secretary:

(*1*) Uses the annual average percent change of the All Items Consumer Price Index for All Urban Consumers (CPI–U), before seasonal adjustment, as the measurement of inflation; and

(*2*) If the adjustment calculated under paragraph (c)(2)(viii)(D)(*1*) of this section is equal to or greater than $100, adding the adjustment to $2,085 threshold amount, or its inflation-adjusted equivalent, and rounding up to the nearest $5.

(E) The Secretary will publish a notice in the FEDERAL REGISTER announcing any increase to the amount specified in paragraph (c)(2)(viii)(B)(*1*) of this section.

(F) For purposes of this paragraph (c), the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(G) For purposes of this paragraph (c), the Secretary may determine that extenuating circumstances exist based on documentation that may include, but is not limited to—

(*1*) An updated credit report for the parent; or

(*2*) A statement from the creditor that the parent has repaid or made satisfactory arrangements to repay a debt that was considered in determining that the parent has an adverse credit history.

(*3*) For purposes of paragraph (c)(2) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

(d) *Defaulted Perkins, FFEL, and Direct Loan program borrowers.* Except as

noted in § 685.220(d)(1)(ii)(A)(*3*), in the case of a student or parent borrower who is currently in default on a Perkins, FFEL, or Direct Loan program loan, the borrower must make satisfactory repayment arrangements, as described in paragraph (1) of the definition of that term under § 685.102(b), on the defaulted loan.

(e) *Use of loan proceeds to replace expected family contribution.* The amount of a Direct Unsubsidized Loan, a Direct PLUS loan, or a non-federal non-need based loan, including a private, state-sponsored, or institution loan, obtained for a loan period may be used to replace the expected family contribution for that loan period.

(f) *Limitations on eligibility for Direct Subsidized Loans and borrower responsibility for accruing interest for first-time borrowers on or after July 1, 2013*—(1) *Definitions.* The following definitions apply to this paragraph:

(i) *First-time borrower* means an individual who has no outstanding balance of principal or interest on a Direct Loan Program or FFEL Program loan on July 1, 2013, or on the date the borrower obtains a Direct Loan Program loan after July 1, 2013.

(ii) *Maximum eligibility period* is a period of time, measured in academic years, equal to 150 percent of the length of the educational program, as published by the institution, in which the borrower is currently enrolled.

(iii) *Subsidized usage period* is, except as provided in paragraph (f)(4) of this section, a period of time measured in academic years and rounded to the nearest tenth of a year calculated as the—

$$\frac{\text{Number of days in the borrower's loan period for a Direct Subsidized Loan}}{\text{Number of days in the academic year for annual loan limit purposes for which the borrower receives the Direct Subsidized Loan}}$$

(iv) *Remaining eligibility period* is the difference, measured in academic years, between the borrower's maximum eligibility period and the sum of the borrower's subsidized usage periods, except as provided in paragraphs (f)(7)(ii) and (f)(7)(iii) of this section.

(2) *Loss of eligibility for Direct Subsidized Loans.* A first-time borrower is not eligible for additional Direct Subsidized Loans when the borrower has no remaining eligibility period. Such a borrower may still receive Direct Unsubsidized Loans for which the borrower is otherwise eligible.

(3) *Borrower responsibility for accruing interest.* (i) Notwithstanding any provision of this part that provides for the borrower to not be responsible for accruing interest on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, and except as provided in paragraphs (f)(6)(v) and (f)(7)(iv) of this section, a first-time borrower becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan beginning on the date—

(A) The borrower has no remaining eligibility period; and

(B) The borrower attends any undergraduate program or preparatory coursework on at least a half-time basis at an eligible institution that participates in the title IV, HEA programs.

(ii) The borrower continues to be responsible for the interest that accrues on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan for which the borrower previously became responsible for accruing interest in accordance with paragraph (f)(3)(i) of this section.

(iii) For any loan for which the borrower becomes responsible for accruing interest in accordance with paragraph (f)(3)(i) of this section, the borrower is responsible for only the interest that accrues after the borrower meets the criteria in paragraph (f)(3)(i) of this section and unpaid interest is capitalized in the same manner as for a Direct Unsubsidized Loan.

(iv) A borrower who completes an undergraduate program and who has not become responsible for accruing interest on Direct Subsidized Loans as a result of attendance in that program does not become responsible for accruing interest under paragraph (f)(3)(i) of this section on any Direct Subsidized Loans received for attendance in any program prior to completing that undergraduate program and for which the

borrower has not previously become responsible for accruing interest, regardless of subsequent attendance in any other program.

(4) *Exceptions to the calculation of subsidized usage periods.* (i) For a first-time borrower who receives a Direct Subsidized Loan in an amount that is equal to the full annual loan limit for a loan period that is less than a full academic year in length, the subsidized usage period is one year.

(ii) For a first-time borrower who is enrolled on a half-time or three-quarter-time basis, the borrower's prorated subsidized usage period is calculated by multiplying the borrower's subsidized usage period by 0.5 or 0.75, respectively.

(5) *Subsequent attendance in programs of greater duration.* A first-time borrower who subsequently attends a program that is longer than the program the borrower previously attended—

(i) Is eligible for a Direct Subsidized Loan if the borrower's remaining eligibility period is greater than zero; and

(ii) Regains eligibility for Direct Subsidized Loans if the borrower previously lost eligibility for Direct Subsidized Loans in accordance with paragraph (f)(2) of this section.

(6) *Treatment of preparatory coursework.* For first-time borrowers who receive a Direct Subsidized Loan under 34 CFR 668.32(a)(1)(ii) who are enrolled for no longer than one 12-month period in a course of study necessary for enrollment in an eligible program—

(i) Direct Subsidized Loans received for such preparatory coursework are included in the calculation of the borrower's subsidized usage period;

(ii) The maximum eligibility period for preparatory coursework necessary for enrollment in an undergraduate program is the maximum eligibility period for the undergraduate program for which the preparatory coursework is required;

(iii) The maximum eligibility period for preparatory coursework necessary for enrollment in a graduate or professional program is the maximum eligibility period for the undergraduate program for which the borrower most recently received a Direct Subsidized Loan;

(iv) For enrollment in preparatory coursework necessary for enrollment in an undergraduate program, the borrower becomes responsible for accruing interest as described in paragraph (f)(3) of this section only if the borrower has no remaining eligibility period in the program for which the coursework is required; and

(v) Enrollment in preparatory coursework necessary for enrollment in a graduate or professional program does not result in a borrower becoming responsible for accruing interest as described in paragraph (f)(3) of this section.

(7) *Treatment of teacher certification programs for which an institution does not award an academic credential.* For first-time borrowers who receive a Direct Subsidized Loan under 34 CFR 668.32(a)(1)(iii) who are enrolled at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State but for which the institution awards no academic credential—

(i) The borrower's maximum eligibility period for Direct Subsidized Loans is a period of time equal to 150 percent of the length of the teacher certification program, as published by the institution, in which the borrower is currently enrolled;

(ii) For purposes of determining a borrower's remaining eligibility period for such teacher certification programs, only Direct Subsidized Loans the borrower received for enrollment in such programs are included in the borrower's subsidized usage period;

(iii) For purposes of determining a borrower's remaining eligibility period for programs other than a teacher certification program for which an institution does not award an academic credential, any Direct Subsidized Loans that the borrower received for enrollment in such a teacher certification program are not included in a borrower's subsidized usage period; and

(iv) Enrollment in such a teacher certification program does not result in a borrower becoming responsible for accruing interest on any Direct Subsidized Loan under paragraph (f)(3) of this section.

(8) *Special admission degree programs.* (i) For purposes of calculating the

maximum eligibility period, a bachelor's degree program that requires an associate degree or the successful completion of at least two years of postsecondary coursework as a prerequisite for admission has a program length of four years.

(ii) For purposes of calculating the maximum eligibility period, a selective admission associate degree program that requires an associate degree or the successful completion of at least two years of postsecondary coursework as a prerequisite for admission has a program length of four years. For purposes of this paragraph (f)(8)(ii), a selective admission associate degree program—

(A) Admits only a selected number of applicants based on additional competitive criteria which may include entrance exam scores, class rank, grade point average, written essays, or recommendation letters; and

(B) Provides the academic qualifications necessary for a profession that requires licensure or a certification by the State.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 685.200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 81 FR 76080, Nov. 1, 2016, § 685.200 was amended by adding paragraphs (f)(3)(v) and (f)(4)(iii), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 685.200 Borrower eligibility.

* * * * *

(f) * * *

(3) * * *

(v) A borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge that results in a remaining eligibility period greater than zero is no longer responsible for the interest that accrues on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan unless the borrower once again becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, for the life of the loan, as described in paragraph (f)(3)(i) of this section.

(4) * * *

(iii) For a first-time borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge on a Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan, the Subsidized Usage Period is reduced. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in full, the Subsidized Usage Period of those loans is zero years. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in part, the Subsidized Usage Period may be reduced if the discharge results in the inapplicability of paragraph (f)(4)(i) of this section.

* * * * *

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the school in which the student is enrolled must perform the following functions:

(i) Create a loan origination record and transmit the record to the Secretary.

(ii) Ensure that the loan is supported by a completed Master Promissory Note (MPN) and, if applicable, transmit the MPN to the Secretary.

(iii) In accordance with 34 CFR 668.162, draw down funds or receive funds from the Secretary, and disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* (1) For a parent to obtain a Direct PLUS Loan, the parent must complete the Direct PLUS Loan MPN and the dependent student on whose behalf the parent is borrowing must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) For a graduate or professional student to apply for a Direct PLUS Loan, the student must complete a

Free Application for Federal Student Aid and submit it in accordance with instructions in the application. The graduate or professional student must also complete the Direct PLUS Loan MPN.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the Direct PLUS Loan MPN and, if applicable, submit it to the Secretary. The Secretary makes a determination as to whether the parent or graduate or professional student has an adverse credit history. The school performs the functions described in paragraph (a)(2) of this section.

(c) *Application for a Direct Consolidation Loan.* (1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Secretary. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Secretary. The Secretary answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Secretary, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.220.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

[64 FR 58965, Nov. 1, 1999, as amended at 65 FR 65629, Nov. 1, 2000; 71 FR 45711, Aug. 9, 2006; 78 FR 65825, Nov. 1, 2013]

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

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans first disbursed on or after July 1, 1995, and before July 1, 1998.* (i) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(ii) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(3) *Interest Rate for Direct Subsidized Loans and Direct Subsidized Loans first disbursed on or after July 1, 1998, and before July 1, 2006.* (i) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(ii) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(4) *Interest rate for Direct Subsidized Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2006, and before July 1,*

2013. For a loan for which the first disbursement is made:

(i) On or after July 1, 2006, and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(ii) On or after July 1, 2008, and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(iii) On or after July 1, 2009, and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(iv) On or after July 1, 2010, and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(v) On or after July 1, 2011, and before July 1, 2013, the interest rate is 3.4 percent on the unpaid balance of the loan.

(5) *Interest rate for Direct Subsidized Loans made to graduate or professional students for which the first disbursement is made on or after July 1, 2006, and before July 1, 2012*. The interest rate is 6.8 percent.

(6) *Interest rate for Direct Unsubsidized Loans first disbursed on or after July 1, 2006, and before July 1, 2013*. The interest rate is 6.8 percent.

(7) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2013*. The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(i) A rate equal to the high yield of the 10-year Treasury note auctioned at the final auction held prior to the June 1 preceding the 12-month period, plus 2.05 percentage points, or

(ii) 8.25 percent.

(8) *Interest rate for Direct Unsubsidized Loans made to graduate or professional students for which the first disbursement is made on or after July 1, 2013*. The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(i) A rate equal to the high yield of the 10-year Treasury note auctioned at the final auction held prior to the June 1 preceding the 12-month period, plus 3.6 percentage points, or

(ii) 9.5 percent.

(9) *Interest rate for Direct PLUS Loans. (i) Direct PLUS Loans first disbursed before July 1, 1998*. (A) *Interest rates for periods ending before July 1, 2001*. During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(B) *Interest rates for periods beginning on or after July 1, 2001*. During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 26 preceding that period. The interest rate is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before that June 26 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Direct PLUS Loans first disbursed on or after July 1, 1998, and before July 1, 2006*. During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(iii) *Direct PLUS Loans first disbursed on or after July 1, 2006, and before July 1, 2013*. The interest rate is 7.9 percent.

(iv) *Direct PLUS Loans first disbursed on or after July 1, 2013*. The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(A) A rate equal to the high yield of the 10-year Treasury note auctioned at

the final auction held prior to the June 1 preceding the 12-month period, plus 4.6 percentage points, or

(B) 10.5 percent.

(10) *Interest rate for Direct Consolidation Loans*—(i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.* (A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1) of this section.

(B) *Loans first disbursed on or after July 1, 1995, and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(2) of this section.

(C) *Loans for which the first disbursement is made on or after July 1, 1998, and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998, for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(3) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998, and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999, and before July 1, 2013.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(F) *Loans for which the consolidation application is received by the Secretary on or after July 1, 2013.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.* (A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(9)(i) of this section.

(B) *Loans for which the first disbursement is made on or after July 1, 1998, and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998, for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(9)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998, and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999, and before July 1, 2006.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

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

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

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

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

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

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

(b) *Capitalization*. (1) The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called ''capitalization.''

(2) For a Direct Unsubsidized Loan, a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, a Direct PLUS Loan, or for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012, and before July 1, 2014, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.

(3) Notwithstanding § 685.208(l)(5) and § 685.209(b)(3)(iv), for a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment or forbearance.

(4) Except as provided in paragraph (b)(3) of this section and in §§ 685.208(l)(5) and 685.209(b)(3)(iv), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative repayment plan or the income-contingent repayment plan described in § 685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

(5) The Secretary may capitalize unpaid interest when the borrower defaults on the loan.

(c) *Loan fee for Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans*. The Secretary—

(1)(i) For a Direct Subsidized or Direct Unsubsidized loan first disbursed prior to February 8, 2006, charges a borrower a loan fee not to exceed 4 percent of the principal amount of the loan;

(ii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after February 8, 2006, but before July 1, 2007, charges a borrower a loan fee not to exceed 3 percent of the principal amount of the loan;

(iii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2007, but before July 1, 2008, charges a borrower a loan fee not to exceed 2.5 percent of the principal amount of the loan;

(iv) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2008, but before July 1, 2009, charges the borrower a loan fee not to exceed 2 percent of the principal amount of the loan;

(v) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2009, but before July 1, 2010, charges the borrower a loan fee not to exceed 1.5 percent of the principal amount of the loan;

(vi) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2010, charges the borrower a loan fee not to exceed 1 percent of the principal amount of the loan; and

(vii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS loan.

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a pro rated portion of the fee from each disbursement; and

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with § 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 30 days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provision of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or the Secretary's agents in collecting installments not paid when due. These charges do not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.*, local and long-distance telephone calls).

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan, the Secretary assesses collection costs on the basis of 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

[59 FR 61690, Dec. 1, 1994, as amended at 61 FR 29900, June 12, 1996; 62 FR 63434, Nov. 28, 1997; 64 FR 46254, Aug. 24, 1999; 66 FR 34765, June 29, 2001; 71 FR 45711, Aug. 9, 2006; 72 FR 62009, Nov. 1, 2007; 74 FR 56001, Oct. 29, 2009; 77 FR 66135, Nov. 1, 2012; 78 FR 28986, May 16, 2013; 78 FR 65825, Nov. 1, 2013; 80 FR 67238, Oct. 30, 2015]

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $3,500 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

(i) $4,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student for periods of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed $5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student, except as provided in paragraph (c)(3) of this section, the total amount a student may borrow for any academic year of study under the Direct Unsubsidized Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Direct Subsidized Loan Program, plus—

(i) $2,000 for a program of study of at least a full academic year in length.

(ii) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2)(i) In the case of an independent undergraduate student or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Direct Unsubsidized Loan Program may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Direct Subsidized Loan Program in combination with the amounts determined under paragraph (c) of this section.

(ii) In the case of a graduate or professional student for a period of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed the amount determined under paragraph (a)(5) of this section, less any amount received under the Direct Subsidized Loan Program.

(iii) In the case of a graduate or professional student for a period of enrollment beginning on or after July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed $8,500.

(c) *Additional eligibility for Direct Unsubsidized Loans.* (1)(i) An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow amounts under the Direct Unsubsidized Loan Program in addition to any amount borrowed under paragraph (b) of this section, except as provided in paragraph (c)(3) for certain dependent undergraduate students.

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parent likely will be precluded by exceptional circumstances from borrowing under the Direct PLUS Loan Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator must base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and must document the determination in the school's file.

(iii) ''Exceptional circumstances'' under paragraph (c)(1)(ii) of this section include but are not limited to circumstances in which the student's parent receives only public assistance or disability benefits, the parent is incarcerated, the parent has an adverse credit history, or the parent's whereabouts are unknown. A parent's refusal to borrow a Direct PLUS Loan does not constitute ''exceptional circumstances.''

(2) The additional amount that a student described in paragraph (c)(1)(i) of

this section may borrow under the Direct Unsubsidized Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $6,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $6,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $6,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $6,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $6,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $7,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $7,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or

professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $12,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $6,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $7,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $7,000.

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

(3) A dependent undergraduate student who qualifies for additional Direct Unsubsidized Loan amounts under this section in accordance with paragraph (c)(1)(ii) is not eligible to receive the additional Direct Unsubsidized Loan amounts provided under paragraph (b)(1)(ii) of this section.

(d) *Aggregate limits for subsidized loans.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Subsidized Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500 in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Unsubsidized Federal Stafford Loans, and Federal SLS Loans, excluding the amount of capitalized interest, may not exceed the following:

(1) For a dependent undergraduate student, $31,000 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, $57,500 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts.

(3) For a graduate or professional student, $138,500, including any loans for undergraduate study, minus any Direct Subsidized Loan, Subsidized Federal Stafford Loan, and Federal SLS Program loan amounts.

(f) *Direct PLUS Loans annual limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student, or that a graduate or professional student may borrow, for any academic year of study may not exceed the cost of attendance minus other estimated financial assistance for the student.

(g) *Direct PLUS Loans aggregate limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student, or that a graduate or professional student may borrow, for enrollment in an eligible program of study may not exceed the student's cost of attendance minus other estimated financial assistance for that student for the entire period of enrollment.

(h) *Loan limit period.* The annual loan limits apply to an academic year, as defined in 34 CFR 668.3.

(i) *Treatment of Direct Consolidation Loans and Federal Consolidation Loans.* The percentage of the outstanding balance on Direct Consolidation Loans or Federal Consolidation Loans counted against a borrower's aggregate loan limits is calculated as follows:

(1) For Direct Subsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Subsidized and Subsidized Federal Stafford Loans.

(2) For Direct Unsubsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Unsubsidized, Federal SLS, and Unsubsidized Federal Stafford Loans.

(j) *Maximum loan amounts.* In no case may a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(k) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58966, Nov. 1, 1999; 67 FR 67081, Nov. 1, 2002; 68 FR 75430, Dec. 31, 2003; 71 FR 45711, Aug. 9, 2006; 71 FR 64399, Nov. 1, 2006; 73 FR 35495, June 23, 2008; 74 FR 56001, Oct. 29, 2009; 78 FR 65827, Nov. 1, 2013]

§ 685.204 Deferment.

(a) *General.* (1) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), or (j) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Unsubsidized Loan, Direct Unsubsidized Consolidation Loan, Direct PLUS Loan, or Direct PLUS Consolidation Loan borrower who meets the requirements described in paragraphs (b) through (j) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower. At or before the time a deferment is granted, the Secretary provides information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

(3) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(4)(i) To receive a deferment, except as provided for in-school deferments under paragraphs (b)(2)(ii) through (iv) of this section, the borrower must request the deferment and, except as provided in paragraph (a)(5)(i) of this section, provide the Secretary with all information and documents required to establish eligibility for the deferment.

(ii) In the case of a military service deferment under paragraph (h) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower. If the Secretary grants a military service deferment based on a request from a borrower's representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

(5)(i) After receiving a borrower's written or verbal request for a deferment, the Secretary may grant a graduate fellowship deferment under paragraph (d), a rehabilitation training deferment under paragraph (e), an unemployment deferment under paragraph (f), an economic hardship deferment under paragraph (g), a military service deferment under paragraph (h), or a post-active duty student deferment under paragraph (i) of this section if the Secretary confirms that the borrower has received a deferment on a FFEL Program loan for the same reason and during the same time period.

(ii) The Secretary will grant a deferment based on the information obtained under paragraph (a)(5)(i) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary will resolve any discrepant information before granting a deferment under paragraph (a)(5)(i) of this section.

(iii) If the Secretary grants a deferment under paragraph (a)(5)(i) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(b) *In-school deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period during which—

(i) The borrower is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2) For the purpose of paragraph (b)(1) of this section, the Secretary processes a deferment when—

(i) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(ii) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan;

(iii) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(iv) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(3)(i) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(2)(ii), (iii), or (iv) of this section, the borrower has the option to cancel the deferment and continue to make payments on the loan.

(ii) If the borrower elects to cancel the deferment and continue to make payments on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

(c) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the six-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower in accordance with § 685.204(b)(2)(ii), (iii), or (iv), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the six-month post-enrollment period described in paragraph (c)(1)(i) of this section.

(2) A parent Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) Upon the request of the borrower, during the period when the student on whose behalf the loan was obtained is

enrolled at an eligible institution on at least a half-time basis; and

(ii) Upon the request of the borrower, during the six-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(d) *Graduate fellowship deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's graduate fellowship program certifies that the borrower is pursuing a course of study pursuant to an eligible graduate fellowship program in accordance with paragraph (d)(2) of this section.

(2)(i) To qualify for a deferment under paragraph (d)(1) of this section, a borrower must—

(A) Hold at least a baccalaureate degree conferred by an institution of higher education;

(B) Have been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program, as defined in paragraph (d)(2)(ii) of this section; and

(C) Not be serving in a medical internship or residency program, except for a residency program in dentistry.

(ii) An eligible graduate fellowship program is a fellowship program that—

(A) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(B) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(C) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(D) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's rehabilitation training program certifies that the borrower is pursuing an eligible rehabilitation training program for individuals with disabilities in accordance with paragraph (e)(2) of this section.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Unemployment deferment.* (1) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower is seeking and unable to find full-time employment.

(2) A borrower qualifies for an unemployment deferment by—

(i) Providing evidence of eligibility for unemployment benefits to the Secretary; or

(ii) Providing to the Secretary a written certification, or an equivalent as approved by the Secretary, that—

(A) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(B) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (f)(2)(ii) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to six months before the date the Secretary receives the borrower's request, and may be granted for up to six months after that date.

(4) The Secretary does not grant an unemployment deferment beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (f)(2)(i) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (f)(2)(ii) of this section.

(g) *Economic hardship deferment.* (1)(i) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower has experienced or will experience an economic hardship in accordance with paragraph (g)(2) of this section.

(ii) An economic hardship deferment is granted for periods of up to one year at a time, except that a borrower who receives a deferment under paragraph (g)(2)(iv) of this section may receive an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum.

(2) A borrower qualifies for an economic hardship deferment if the borrower—

(i) Has been granted an economic hardship deferment under either the FFEL or the Federal Perkins Loan programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Direct Loan;

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance;

(iii) Is working full-time (as defined in paragraph (g)(3)(iii) of this section) and has a monthly income (as defined in paragraph (g)(3)(iv) of this section) that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size (as defined in paragraph (g)(3)(v) of this section) as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States; or

(iv) Is serving as a volunteer in the Peace Corps.

(3) The following rules apply to a deferment granted under paragraph (g)(2)(iii) of this section:

(i) For an initial period of deferment, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income.

(ii) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of

deferment under paragraph (g)(2)(iii) of this section, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(iii) A borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(iv) A borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(v) Family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(h) *Military service deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of the service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(3) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(4) The provisions of paragraph (h) of this section do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(5) As used in paragraph (h) of this section—

(i) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(A) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(B) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(C) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned;

(ii) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds;

(iii) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(iv) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(v) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(i) *Post-active duty student deferment.* (1) A Direct Loan borrower is eligible for a deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled on at least a half-time basis in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section, ''active duty'' means active duty as defined in 10 U.S.C. 101(d)(1) for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status on at least a half-time basis during the grace period or the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) *Additional deferments for Direct Loan borrowers with FFEL Program loans made before July 1, 1993.* If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraphs (b) through (i) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a ''new borrower'' as that term is defined in 34 CFR 682.210(b)(7).

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[78 FR 65829, Nov. 1, 2013]

§ 685.205 Forbearance.

(a) *General.* ''Forbearance'' means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under § 685.204 and

the Secretary does not subsidize the interest benefits on behalf of the borrower;

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990;

(5)(i) The borrower is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217.

(ii) Before a forbearance is granted under § 685.205(a)(5)(i), the borrower must—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

(iii) The Secretary grants forbearance under paragraph (a)(5) of this section only if the Secretary believes, at the time of the borrower's annual request, that the expected forgiveness amount under § 685.217(d) will satisfy the anticipated remaining outstanding balance on the borrower's loan at the time of the expected forgiveness;

(6) For not more than three years during which the borrower or endorser—

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

(8)(i) The Secretary may grant a forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(ii) If the forbearance is based on the borrower's or endorser's oral affirmation of the obligation to repay the debt, the forbearance period is limited to 120 days, such a forbearance is not granted consecutively, and the Secretary will—

(A) Orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and all other repayment options available to the borrower;

(B) Send a notice to the borrower or endorser that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt and that includes information on all other repayment options available to the borrower; and

(C) Retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(iii) For purposes of this section, an ''affirmation'' means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to, the borrower's or endorser's—

(A) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(B) Oral acknowledgement and agreement to repay the debt documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or

(C) A payment made on the loan by the borrower or endorser.

(9)(i) The borrower is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under a student loan repayment program.

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to—

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment or forbearance period;

(3) The period beginning when the borrower entered repayment without the Secretary's knowledge until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan obtained by a parent borrower) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.214;

(ii) Under § 685.215;

(iii) Under § 685.216;

(iv) Under § 685.217; or

(v) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term;

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency;

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

(c) *Period of forbearance.* (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 61 FR 29900, June 12, 1996; 64 FR 58968, Nov. 1, 1999; 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 68 FR 75430, Dec. 31, 2003; 71 FR 45712, Aug. 9, 2006; 73 FR 63255, Oct. 23, 2008; 74 FR 56003, Oct. 29, 2010; 78 FR 65832, Nov. 1, 2013]

EFFECTIVE DATE NOTE: At 81 FR 76080, Nov. 1, 2016, § 685.205 was amended by revising paragraph (b)(6), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.206(c);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222; or

(vii) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower must give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b)(1) The borrower must promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The borrower must promptly notify the school of any change in address during enrollment.

(c) *Borrower defenses.* (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR part 31.

(iv) Consumer reporting agency reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in § 685.309(c) unless the school received actual notice of the claim during that period.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 64 FR 58972, Nov. 1, 1999; 78 FR 65832, Nov. 1, 2013]

EFFECTIVE DATE NOTE: At 81 FR 76080, Nov. 1, 2016, § 685.206 was amended by revising paragraph (c), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 685.206 Borrower responsibilities and defenses.

* * * * *

(c) *Borrower defenses.* (1) For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph. A ''borrower defense'' refers to any act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.

(ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(2) The order of objections for defaulted Direct Loans are as described in § 685.222(a)(6). A borrower defense claim under this section must be asserted, and will be resolved, under the procedures in § 685.222(e) to (k).

(3) For an approved borrower defense under this section, except as provided in paragraph (c)(4) of this section, the Secretary may initiate an appropriate proceeding to collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense, within the later of—

(i) Three years from the end of the last award year in which the student attended the institution; or

(ii) The limitation period that State law would apply to an action by the borrower to recover on the cause of action on which the borrower defense is based.

(4) The Secretary may initiate a proceeding to collect at any time if the institution received notice of the claim before the end of the later of the periods described in paragraph (c)(3) of this section. For purposes of this paragraph, notice includes receipt of—

(i) Actual notice from the borrower, from a representative of the borrower, or from the Department;

(ii) A class action complaint asserting relief for a class that may include the borrower; and

(iii) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower.

* * * * *

§ 685.207 Obligation to repay.

(a) *Obligation of repayment in general.* (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under § 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, the discharge provisions in § 685.212, and the loan forgiveness provisions in §§ 685.217 and 685.219.

(3) A borrower's first payment on a Direct Loan is due within 60 days of the beginning date of the repayment period as determined in accordance with paragraph (b), (c), (d), or (e) of this section.

(b) *Direct Subsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an ''in-school'' period and is not required to make payments on a Direct Subsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204(b).

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

(3)(i) A borrower is not obligated to pay interest on a Direct Subsidized Loan during periods when the borrower is enrolled at an eligible school on at least a half-time basis unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, a borrower is not obligated to pay interest on a Direct Subsidized Loan during grace periods.

(iii) In the case of a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, a borrower is responsible for the interest that accrues during the grace period.

(4) The repayment period for a Direct Subsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) *Direct Unsubsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an ''in-school'' period and is not required to make payments of principal on a Direct Unsubsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Unsubsidized Loan.

(3) A borrower is responsible for the interest that accrues on a Direct Unsubsidized Loan during in-school and grace periods. Interest begins to accrue on the day the first installment is disbursed. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Direct Unsubsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Direct PLUS Loan repayment.* The repayment period for a Direct PLUS Loan begins on the day the loan is fully disbursed. Interest begins to accrue on the day the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(e) *Direct Consolidation Loan repayment.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, the repayment period for a Direct Consolidation Loan begins and interest begins to accrue on the day the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(2) In the case of a borrower whose consolidation application was received before July 1, 2006, a borrower who obtains a Direct Subsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (b) of this section.

(3) In the case of a borrower whose consolidation application was received

before July 1, 2006, a borrower who obtains a Direct Unsubsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (c) of this section.

(f) *Determining the date on which the grace period begins for a borrower in a correspondence program.* For a borrower of a Direct Subsidized or Direct Unsubsidized Loan who is a correspondence student, the grace period specified in paragraphs (b)(2) and (c)(2) of this section begins on the earliest of—

(1) The day after the borrower completes the program;

(2) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(3) 60 days following the last day for completing the program as established by the school.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58968, Nov. 1, 1999; 68 FR 75430, Dec. 31, 2003; 71 FR 45712, Aug. 9, 2006; 78 FR 65832, Nov. 1, 2013]

§ 685.208 Repayment plans.

(a) *General*—(1) *Borrowers who entered repayment before July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section;

(C) The graduated repayment plan in accordance with paragraph (f) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section; or

(C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (g) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section; or

(C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section; or

(D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section.

(v) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income-contingent repayment plans, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under an income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in § 685.209 and § 685.221 for the income-contingent repayment plans and the income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

(b) *Standard repayment plan for all Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers, regardless of when they entered repayment, and for Direct Consolidation Loan borrowers who entered repayment before July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) A borrower's payments under this repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) *Standard repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments over a repayment period that varies with the total amount of the borrower's student loans, as described in paragraph (j) of this section.

(2) A borrower's payments under this repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(d) *Extended repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (i) of this section.

(2) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(e) *Extended repayment plan for all Direct Loan borrowers entering repayment on or after July 1, 2006.* (1) Under this repayment plan, a new borrower with more than $30,000 in outstanding Direct Loans accumulated on or after October 7, 1998 must repay either a fixed annual or graduated repayment amount over a period not to exceed 25 years from the date the loan entered repayment. For this repayment plan, a new borrower is defined as an individual who has no outstanding principal or interest balance on a Direct Loan as of October 7,

1998, or on the date the borrower obtains a Direct Loan on or after October 7, 1998.

(2) A borrower's payments under this plan are at least $50 per month, and will be more if necessary to repay the loan within the required time period.

(3) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(f) *Graduated repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (i) of this section.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under this repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section, or more than 150 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section.

(g) *Graduated repayment plan for Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers entering repayment on or after July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels over a period of time not to exceed ten years from the date the loan entered repayment.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(h) *Graduated repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full by making monthly payments that gradually increase in stages over the course of a repayment period that varies with the total amount of the borrower's student loans, as described in paragraph (j) of this section.

(2) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(i) *Repayment period for the extended and graduated plans described in paragraphs (d) and (f) of this section, respectively.* Under these repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than $10,000, the borrower must repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower must repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower must repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower must repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower must repay the loans within 30 years of entering repayment.

(j) *Repayment period for the standard and graduated repayment plans described in paragraphs (c) and (h) of this section, respectively.* Under these repayment plans, if the total amount of the Direct Consolidation Loan and the borrower's other student loans, as defined in § 685.220(i), is—

(1) Less than $7,500, the borrower must repay the Consolidation Loan within 10 years of entering repayment;

(2) Equal to or greater than $7,500 but less than $10,000, the borrower must repay the Consolidation Loan within 12 years of entering repayment;

(3) Equal to or greater than $10,000 but less than $20,000, the borrower must repay the Consolidation Loan within 15 years of entering repayment;

(4) Equal to or greater than $20,000 but less than $40,000, the borrower must repay the Consolidation Loan within 20 years of entering repayment;

(5) Equal to or greater than $40,000 but less than $60,000, the borrower must repay the Consolidation Loan within 25 years of entering repayment; and

(6) Equal to or greater than $60,000, the borrower must repay the Consolidation Loan within 30 years of entering repayment.

(k) *Income-contingent repayment plans.* (1) Under the income-contingent repayment plan described in § 685.209(a), the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) Under the income-contingent repayment plan described in § 685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

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

(4) For the income-contingent repayment plan described in § 685.209(b), the regulations in effect at the time a borrower enters repayment and selects the income-contingent repayment plan or changes into the income-contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income-contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(5) Provisions governing the income-contingent repayment plans are in § 685.209.

(l) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (h) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) A borrower must repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

(5) If the amount of a borrower's monthly payment under an alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original principal amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original principal amount is the amount owed by the borrower when the borrower enters repayment.

(m) *Income-based repayment plan.* (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 15 percent or, for a new borrower as of July 1, 2014, as defined in § 685.221(a)(4), 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) The specific provisions governing the income-based repayment plan are in § 685.221.

(Authority: 20 U.S.C. 1087a *et seq.*)

[71 FR 45712, Aug. 9, 2006, as amended at 71 FR 64400, Nov. 1, 2006; 73 FR 63255, Oct. 23, 2008; 77 FR 66135, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013; 80 FR 67238, Oct. 30, 2015]

§ 685.209 Income-contingent repayment plans.

(a) *Pay As You Earn repayment plan:* The Pay As You Earn repayment plan is an income-contingent repayment plan for eligible new borrowers.

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

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income;

(ii) *Eligible loan, for purposes of determining whether a borrower has a partial financial hardship in accordance with paragraph (a)(1)(v) of this section or adjusting a borrower's monthly payment amount in accordance with paragraph (a)(2)(ii) of this section,* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Eligible new borrower* means an individual who—

(A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B)(*1*) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(*2*) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

(iv) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs;

(v) *Partial financial hardship* means a circumstance in which—

(A) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the Pay As You Earn repayment

plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the Pay As You Earn repayment plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

(vi) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(2) *Terms of the Pay As You Earn repayment plan.* (i) A borrower may select the Pay As You Earn repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

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

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

(B) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

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

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

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

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

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

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the Pay As You Earn repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the income-based repayment plan or the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the Pay As You Earn repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during

which the borrower receives an economic hardship deferment.

(iv)(A) Except as provided in paragraph (a)(2)(iii) of this section, accrued interest is capitalized—

(*1*) When a borrower is determined to no longer have a partial financial hardship; or

(*2*) At the time a borrower chooses to leave the Pay As You Earn repayment plan.

(B)(*1*) The amount of accrued interest capitalized under paragraph (a)(2)(iv)(A)(*1*) of this section is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the Pay As You Earn repayment plan.

(*2*) After the amount of accrued interest reaches the limit described in paragraph (a)(2)(iv)(B)(*1*) of this section, interest continues to accrue, but is not capitalized while the borrower remains on the Pay As You Earn repayment plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the Pay As You Earn repayment plan or no longer has a partial financial hardship.

(vi) The repayment period for a borrower under the Pay As You Earn repayment plan may be greater than 10 years.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the Pay As You Earn repayment plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

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

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

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

(4) *Changes in the payment amount.* (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the Pay As You Earn repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-contingent payments. In either case, as a result of the recalculation—

(A) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the Pay As You Earn repayment plan; and

(B) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(ii) A borrower who no longer wishes to repay under the Pay As You Earn repayment plan may change to a different repayment plan in accordance with § 685.210(b).

(5) *Eligibility documentation, verification, and notifications.* (i)(A) The Secretary determines whether a borrower has a partial financial hardship to qualify for the Pay As You Earn repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

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

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

(ii) After making a determination that a borrower has a partial financial hardship to qualify for the Pay As You Earn repayment plan for the year the borrower initially elects the plan and for each subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

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

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (a)(5)(i) of this section, if the borrower chooses to remain on the Pay As You Earn repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and (a)(5)(vii) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (a)(2)(iv) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs

(a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (a)(5)(iv)(C) of this section.

(vi) If a borrower who is currently repaying under another repayment plan selects the Pay As You Earn repayment plan but does not provide the documentation described in paragraphs (a)(5)(i)(A) or (a)(5)(i)(B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section if a borrower who is currently repaying under the Pay As You Earn repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline—

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

(*1*) If the new monthly payment amount is less than the borrower's previously calculated Pay As You Earn repayment plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.209(a)(3)(i).

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

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

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

(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated Pay As You Earn repayment plan monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(B) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments

otherwise meet the requirements described in § 685.219(c)(1).

(6) *Loan forgiveness.* (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the Pay As You Earn repayment plan and satisfied at least one of the following conditions during that period:

(A) Made reduced monthly payments under a partial financial hardship as provided in paragraph (a)(2)(i) or (a)(2)(ii) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section.

(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-contingent payments as provided in paragraph (a)(4)(i) of this section.

(C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) with a 10-year repayment period.

(D) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the borrower first selected the Pay As You Earn repayment plan.

(E) Made monthly payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in § 685.221, including a calculated monthly payment amount of $0.00.

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

(G) Received an economic hardship deferment on eligible Direct Loans.

(ii) As provided under paragraph (a)(6)(v) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and

(B)(*1*) The borrower made those monthly payments each year for a 20-year period; or

(*2*) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 20 years of payments.

(iii) For a borrower who qualifies for the Pay As You Earn repayment plan, the beginning date for the 20-year period is—

(A) If the borrower made payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

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

(*1*) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for the Pay As You Earn repayment plan. The beginning date is the date the borrower made the payment or received the deferment after October 1, 2007;

(*2*) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan after October 1, 2007;

(*3*) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under

paragraph (a)(6)(iii)(B)(*1*) or (a)(6)(iii)(B)(*2*) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan;

(*4*) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or

(*5*) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(A) or (a)(6)(iii)(B) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan.

(iv) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 20-year forgiveness period.

(v)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(6) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

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

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

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

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(6) of this section and does not require the borrower to submit a request for loan forgiveness.

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

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

(*2*) Provides the borrower with the information described in paragraph (a)(6)(v)(A)(*3*) of this section; and

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

(b) *Income-contingent repayment plan:* The income-contingent repayment (ICR) plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) *Repayment amount calculation.* (i) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2)(ii) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(ii) The annual amount payable by a borrower under the ICR plan is the lesser of—

(A) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's AGI as shown in the income percentage factor table in a notice published annually by the Secretary in the FEDERAL REGISTER; or

(B) 20 percent of discretionary income.

(iii)(A) For purposes of paragraph (b) of this section, discretionary income is defined as a borrower's AGI minus the amount of the poverty guideline, as defined in paragraph (b)(1)(iii)(B) of this section, for the borrower's family size as defined in § 685.209(a)(1)(iv).

(B) For purposes of paragraph (b) of this section, the term ''poverty guideline'' refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty line to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(v) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(vi) If a borrower's monthly payment is calculated to be greater than $0 but less than or equal to $5.00, the amount payable by the borrower is $5.00.

(vii) For purposes of the annual recalculation described in paragraph (b)(1)(v) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the ICR plan.

(viii) For each calendar year, the Secretary publishes in the FEDERAL REGISTER a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(ix) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(x) At the beginning of the repayment period under the ICR plan, the borrower must make monthly payments of the amount of interest that accrues on the borrower's Direct Loan until the Secretary calculates the borrower's monthly payment amount on the basis of the borrower's income.

(2) *Treatment of married borrowers.* (i)(A) For a married borrower who files a joint Federal tax return with his or her spouse, the AGI for both spouses is used to calculate the monthly payment amount under the ICR plan.

(B) For a married borrower who files a Federal income tax return separately from his or her spouse, only the borrower's AGI is used to determine the monthly payment amount under the ICR plan.

(ii) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under paragraph (b)(1) of this section.

(iii) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(3) *Other features of the ICR plan*—(i) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(ii) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(iii) *Repayment period.* (A) The maximum repayment period under the ICR plan is 25 years.

(B) The repayment period includes—

(*1*) Periods in which the borrower makes payments under the ICR plan on loans that are not in default;

(*2*) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(1)(i);

(*3*) Periods in which the borrower made monthly payments under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan;

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

(*5*) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(*6*) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(*7*) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(*8*) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(*9*) Periods of economic hardship deferment.

(C) If a borrower repays more than one loan under the ICR plan, a separate repayment period for each loan begins when that loan enters repayment.

(D) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the ICR plan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notification that includes—

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

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

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

(E) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (b)(3)(iii)(D) of this section and does not require the borrower to submit a request for loan forgiveness. After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

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

(*2*) Provides the information described in paragraph (b)(3)(iii)(D)(*3*) of this section; and

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

(iv) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(v) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the ICR plan, and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the

terms and conditions of the plan, including—

(A) The borrower's scheduled monthly payment amount as calculated under paragraph (b)(1) or (b)(3)(vi)(D) of this section, as applicable, and the time period during which this scheduled monthly payment will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (b)(3)(vi)(A) of this section, if the borrower chooses to remain on the ICR plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive the information;

(C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in paragraph (b)(3)(ii) of this section, the borrower may contact the Secretary at any time during the borrower's current annual payment period and obtain the Secretary's determination as to whether an adjustment is appropriate; and

(D) An explanation of the consequences, as described in paragraph (b)(3)(vi)(D) of this section, if the borrower does not provide the required information.

(vi) *Documentation of income and certification of family size.* (A) For the initial year that a borrower selects the ICR plan and for each subsequent year that the borrower remains on the plan, the borrower must—

(*1*) Provide to the Secretary, for purposes of calculating a monthly repayment amount and servicing and collecting the borrower's loan, acceptable documentation, as determined by the Secretary, of the borrower's AGI or alternative documentation of income in accordance with paragraph (b)(3)(i) of this section; and

(*2*) Certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for the year.

(B) For each subsequent year that a borrower remains on the ICR plan, the Secretary notifies the borrower in writing of the requirements described in paragraph (b)(3)(vi)(A) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (b)(3)(vi)(B)(*1*) of this section. The notification provides the borrower with—

(*1*) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive the documentation described in paragraph (b)(3)(vi)(A) of this section (annual deadline); and

(*2*) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (b)(3)(vi)(D) of this section, and the effective date for the recalculated monthly payment amount.

(C) The Secretary designates the standard repayment plan for a borrower who initially selects the ICR plan but does not comply with the requirement in paragraph (b)(3)(vi)(A)(*1*) of this section.

(D) If, during a subsequent year that a borrower remains on the ICR plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section within 10 days of the specified annual deadline, the Secretary recalculates the borrower's required monthly payment amount, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period. The maximum recalculated monthly amount the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's loans that was outstanding at the time the borrower began repayment under the ICR plan. The repayment period based on the recalculated payment may exceed 10 years.

(E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section within 10 days of the specified annual deadline—

(*1*) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the

new scheduled monthly payment amount is determined.

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

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

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

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

(F)(*1*) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vi)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

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

(G) If a borrower defaults and the Secretary designates the ICR plan for the borrower but the borrower fails to comply with the requirements in paragraph (b)(3)(vi)(A) of this section, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

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

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

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

(A) Separated from his or her spouse; or

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

(ii) *Eligible loan, for purposes of adjusting a borrower's monthly payment amount in accordance with paragraph (c)(2)(ii) of this section,* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a

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

(iii) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. Family size does not include the borrower's spouse if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs; and

(iv) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

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

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

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

(B) Except in the case of a married borrower filing separately whose spouse's income is excluded in accordance with paragraph (c)(1)(i)(A) or (B) of this section, both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

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

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

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

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

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

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

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

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

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

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

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

(*3*) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the income-based repayment plan or the Pay As You Earn repayment plan.

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

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the REPAYE plan.

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

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

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

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

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

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

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

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

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

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

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

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the

borrower will be notified in advance of the date by which the Secretary must receive this information;

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

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

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

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (c)(4)(i) of this section (annual deadline); and

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

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

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

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

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

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

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

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

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

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

(E) If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment

amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

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

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

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

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

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

(*1*) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(3)(i) of this section.

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

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

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

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

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

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

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

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

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

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

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of $0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

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

(C) A monthly payment made under—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[77 FR 66136, Nov. 1, 2012, as amended at 80 FR 67238, Oct. 30, 2015; 81 FR 76081, Nov. 1, 2016]

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) or (c) for the borrower, as applicable.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary. However, a borrower who is repaying a defaulted loan under an income-contingent repayment plan or the income-based repayment plan in accordance with § 685.211(d)(3)(ii), or who is repaying a Direct Consolidation Loan under the income-contingent repayment plan or the income-based repayment plan in accordance with § 685.220(d)(1)(ii)(A)(*3*) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income-contingent repayment plan or income-based repayment plan in each of the prior three months; or

(ii) The borrower was not required to make payments but made three reasonable and affordable payments in each of the prior three months; and

(iii) The borrower makes and the Secretary approves a request to change plans.

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to either the income-contingent or income-based repayment plan at any time.

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

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 65 FR 65629, Nov. 1, 2000; 68 FR 75430, Dec. 31, 2003; 73 FR 63256, Oct. 23, 2008; 77 FR 66142, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013; 80 FR 67242, Oct. 30, 2015]

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) Except as provided for the income-contingent repayment plan under § 685.209(a)(3) or the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Repayment incentives.* To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

(c) *Refunds and returns of title IV, HEA program funds from schools.* The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under §668.22 against the borrower's outstanding principal and notifies the borrower of the refund or return.

(d) *Default*—(1) *Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with §685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to nationwide consumer reporting agencies, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan, the Secretary may designate the income-contingent repayment plan or the income-based repayment plan for the borrower.

(e) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information, has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program funds, or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days from the date the letter is mailed, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

(4) A borrower may not consolidate a loan under §685.220 for which the borrower is wholly or partially ineligible.

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 9 voluntary, reasonable and affordable monthly payments within 20 days of the due date during 10 consecutive months. The Secretary determines the amount of a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(i) The Secretary initially considers the borrower's reasonable and affordable payment amount to be an amount

equal to 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount applicable to the borrower's family size and State, divided by 12, except that if this amount is less than $5, the borrower's monthly rehabilitation payment is $5.

(ii) The Secretary may calculate the payment amount based on information provided orally by the borrower or the borrower's representative and provide the borrower with a rehabilitation agreement using that amount. The Secretary requires the borrower to provide documentation to confirm the borrower's AGI and family size. If the borrower does not provide the Secretary with any documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment amount within a reasonable time deadline set by the Secretary, the rehabilitation agreement provided is null and void.

(iii) A reasonable and affordable payment amount is not—

(A) A required minimum loan payment amount (*e.g.*, $50) if the Secretary determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(iv) Within 15 business days of the Secretary's determination of the borrower's loan rehabilitation payment amount, the Secretary provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount with the method and timeframe for raising such an objection, a statement that the rehabilitation is null and void if the borrower does not provide the documentation required to calculate the reasonable and affordable payment amount, and an explanation of any other terms and conditions applicable to the required series of payments that must be made. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the Secretary. The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of the effects of having the loans rehabilitated (*e.g.*, removal of the record of default from the borrower's credit history and return to normal repayment).

(2) The Secretary provides the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the Secretary, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be rehabilitated. The statement informs the borrower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explains the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(i) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(ii) Family size as defined in § 685.221(a)(3); and

(iii) Reasonable and necessary expenses, which include—

(A) Food;

(B) Housing;

(C) Utilities;

(D) Basic communication expenses;

(E) Necessary medical and dental costs;

(F) Necessary insurance costs;

(G) Transportation costs;

(H) Dependent care and other work-related expenses;

(I) Legally required child and spousal support;

(J) Other title IV and non-title IV student loan payments; and

(K) Other expenses approved by the Secretary.

(4) The Secretary provides the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the Secretary.

(5) The Secretary includes any payment made under paragraph (1) of the definition of ''satisfactory repayment arrangement'' in §685.102(b) in determining whether the 9 out of 10 payments required under paragraph (f)(1) of this section have been made.

(6) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (f)(3) of this section.

(7) During the rehabilitation period, the Secretary limits contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

(8) If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(9) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(10) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(11)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary continues collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the Secretary is otherwise precluded from doing so.

(ii) After the borrower makes the fifth qualifying monthly payment, the Secretary, unless otherwise directed by the borrower, suspends the garnishment order issued to the borrower's employer.

(iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

(12) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 57961, Oct. 27, 1999; 64 FR 59043, Nov. 1, 1999; 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 67 FR 67081, Nov. 1, 2002; 71 FR 45714, Aug. 9, 2006; 73 FR 63256, Oct. 23, 2008; 74 FR 56003, Oct. 29, 2009; 77 FR 66142, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013]

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's or student's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges a loan based upon other reliable documentation of the

borrower's or student's death that is acceptable to the Secretary.

(3) In the case of a Direct Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student's death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

(b) *Total and permanent disability.* If a borrower meets the requirements in §685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in §685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in §685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(f) *Unpaid refunds.* If a borrower meets the requirements in §685.216, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge*—(1) *For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, any payments received after the date that the eligibility requirements for discharge were met.

(2) *For the discharge condition in paragraph (b) of this section.* Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the date specified in §685.213(b)(4)(iii) or 685.213(c)(2)(i), as applicable.

(3) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(h) *Teacher loan forgiveness program.* If a new borrower meets the requirements in §685.217, the Secretary repays up to $5,000, or up to $17,500, of the borrower's Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Direct Consolidation Loans.

(i) *Public Service Loan Forgiveness Program.* If a borrower meets the requirements in §685.219, the Secretary cancels the remaining principal and accrued interest of the borrower's eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

(j) *September 11 survivors discharge.* If a borrower meets the requirements in §685.218, the Secretary discharges the obligation of the borrower and any endorser to make any further payments—

(1) On an eligible Direct Loan if the borrower qualifies as the spouse of an eligible public servant;

(2) On the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim, if the borrower

qualifies as the spouse of an eligible victim;

(3) On a Direct PLUS Loan incurred on behalf of an eligible victim if the borrower qualifies as an eligible parent; and

(4) On the portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim, if the borrower qualifies as an eligible parent.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 685.212, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 81 FR 76081, Nov. 1, 2016, § 685.212 was amended by adding paragraph (k), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(k) *Borrower defenses.* (1) If a borrower defense is approved under § 685.206(c) or § 685.222—

(i) The Secretary discharges the obligation of the borrower in whole or in part in accordance with the procedures in §§ 685.206(c) and 685.222, respectively; and

(ii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the loan that exceed the amount owed on that portion of the loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim subject to § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim subject to § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(2) In the case of a Direct Consolidation Loan, a borrower may assert a borrower defense under § 685.206(c) or § 685.222 with respect to a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act that was repaid by the Direct Consolidation Loan.

(i) The Secretary considers a borrower defense claim asserted on a Direct Consolidation Loan by determining—

(A) Whether the act or omission of the school with regard to the loan described in paragraph (k)(2) of this section, other than a Direct Subsidized, Unsubsidized, or PLUS Loan, constitutes a borrower defense under § 685.206(c), for a Direct Consolidation Loan made before July 1, 2017, or under § 685.222, for a Direct Consolidation Loan made on or after July 1, 2017; or

(B) Whether the act or omission of the school with regard to a Direct Subsidized, Unsubsidized, or PLUS Loan made on after July 1, 2017 that was paid off by the Direct Consolidation Loan, constitutes a borrower defense under § 685.222.

(ii) If the borrower defense is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan.

(iii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the Direct Consolidation Loan that exceed the amount owed on that portion of the Direct Consolidation Loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim asserted under § 685.206(c), the limitation period under the law applicable to the claim on which relief was granted; or

(B) For a claim asserted under § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(iv) The Secretary returns to the borrower a payment made by the borrower or otherwise recovered on the loan described in paragraph (k)(2) of this section only if—

(A) The payment was made directly to the Secretary on the loan; and

(B) The borrower proves that the loan to which the payment was credited was not legally enforceable under applicable law in the amount for which that payment was applied.

* * * * *

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b)*—(1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. If the borrower notifies the Secretary that the borrower claims to be totally and permanent disabled prior to submitting a total and permanent disability discharge application, the Secretary—

(i) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(ii) Suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days; and

(iii) Informs the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(2) *Physician certification or Social Security Administration (SSA) disability notice of award.* The application must contain—

(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b); or

(ii) An SSA notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower meets the

criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician certified the borrower's application; or

(B) As of the date the Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period

from the date of the physician's certification or the receipt of the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(8) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary; and

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period

indicated in the SSA notice of award for SSDI or SSI benefits.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b)*—(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in § 685.102(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary—

(i) Identifies all title IV loans owed by the veteran and notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower;

(ii) If the application is incomplete, requests the missing information from the veteran and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary's process for reviewing total and permanent disability discharge applications.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied. The notification to the veteran includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) The date that the veteran must resume making payments;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(Approved by the Office of Management and Budget under control number 1845–0065)

(Authority: 20 U.S.C.1087a *et seq.*)

[77 FR 66142, Nov. 1, 2012]

§ 685.214 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct

Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) ''School'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* (1) In order to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a

discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 64 FR 58972, Nov. 1, 1999. Redesignated at 65 FR 65629, Nov. 1, 2000, as amended at 66 FR 34765, June 29, 2001; 78 FR 65834, Nov. 1, 2013]

EFFECTIVE DATE NOTE: At 81 FR 76081, Nov. 1, 2016, §685.215 was amended by revising paragraph (c)(2) and (f)(4), redesignating paragraphs (f)(5) and (6) and paragraph (f)(6) and (7), and adding a new paragraph (f)(5), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added and revised text is set forth as follows:

§ 685.214 Closed school discharge.

* * * * *

(c) * * *

(2) If the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge of a loan under this section, the Secretary—

(i) May discharge the loan without an application from the borrower; and

(ii) With respect to schools that closed on or after November 1, 2013, will discharge the loan without an application from the borrower if the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

* * * * *

(f) * * *

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

* * * * *

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the student's eligibility for a Direct Loan on the basis of ability to benefit from its training and the student did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization; or

(iii) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended.

(iv) Certified the individual's eligibility for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(4)(ii) of this section.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves

the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower must submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must meet the requirements in paragraphs (c) (1) through (6) of this section.

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on defective testing of the student's ability to benefit, the borrower must state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan, in whole or in part, on or after January 1, 1986 to attend a school; and

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower must—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Identity theft.* (i) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(*1*) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(ii) of this section, or of

other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(*2*) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(ii)(A) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(B) Identifying information includes, but is not limited to—

(*1*) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(*2*) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(*3*) Unique electronic identification number, address, or routing code; or

(*4*) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(5) *Claim to third party.* The borrower must state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(6) *Cooperation with Secretary.* The borrower must state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in §685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in §685.214(e).

(7) *Discharge without an application.* The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 61 FR 29900, June 12, 1996; 64 FR 58972, Nov. 1, 1999; 65 FR 65622, Nov. 1, 2000. Redesignated and amended at 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 71 FR 45714, Aug. 9, 2006; 78 FR 65835, Nov. 1, 2013]

EFFECTIVE DATE NOTE: At 81 FR 76082, Nov. 1, 2016, §685.215 was amended by redesignating paragraphs (c)(2) through (7) as (c)(3) through (8), revising paragraph (a)(1), (c) introductory text, (1), the new paragraph (c)(8) and paragraph (d), and adding a new paragraph (c)(2), eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the added and revised text is set forth as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who—

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act that were in effect at the time of certification;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(iii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization;

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(5)(ii) of this section.

* * * * *

(c) *Borrower qualification for discharge.* To qualify for discharge under this section, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act applicable at the time the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Reported not having a valid high school diploma or its equivalent at the time the loan was certified; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable at the time the institution certified the loan.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan)—

(i) Did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(ii) [Reserved]

* * * * *

(8) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower, and notifies the borrower whether the determination is changed.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

* * * * *

§ 685.216 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* (i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other

charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.214(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.* (1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the Secretary does not discharge any amount because a student who completes 60 percent or more of

the loan period is not entitled to a refund.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

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(Authority: 20 U.S.C. 1087a *et seq.*)

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§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower's Direct Subsidized Loans, Direct Unsubsidized Loans, Subsidized and Unsubsidized Federal Stafford Loans, and in certain cases, Direct Consolidation Loans or Federal Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Direct Loan Program or the FFEL Program on October 1, 1998, or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or for an eligible educational service agency.

(ii) Teaching for an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if for least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an eligible educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible Direct Loan and FFEL Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible Direct Loan and FFEL Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or by an eligible educational service agency as a highly qualified teacher of mathematics or

science to secondary school students; or

(ii) At an eligible elementary or secondary school or by an eligible educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Highly qualified means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower who has been employed at an elementary or secondary school or by an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.* If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

(3) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(4) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or

educational service agency where the borrower was employed; or

(B) Taught in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency where the borrower was employed.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science to secondary school students on a full-time basis for an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or for an eligible educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(5) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower taught full time at an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students for an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or for an eligible educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed for an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service for an eligible educational service agency performed after the 2007–2008 academic year.

(6) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(7) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(4)(ii) or (c)(5) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(8) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic

year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(9) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(8) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(10) A borrower who was employed as a teacher at more than one qualifying school, for more than one qualifying educational service agency, or a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(11) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 685.200(b).

(12) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428 K of the Act.

(13) A borrower may request forbearance during each of the five years of qualifying teaching service in accordance with § 685.205(a)(5).

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible Direct Subsidized Loan, an eligible Direct Unsubsidized Loan, or an eligible Subsidized or Unsubsidized Federal Stafford Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 682.216.

(3) The Secretary does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) *Application.* (1) A borrower, after completing the qualifying teacher service, must request loan forgiveness from the Secretary on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Unless otherwise instructed by the borrower, applies the proceeds of the loan forgiveness first to any outstanding Direct Unsubsidized Loan balances, next to any outstanding Direct Subsidized Loan balances, next to any qualifying Direct Unsubsidized Consolidation Loan balances, and last to any qualifying outstanding Direct Subsidized Consolidation Loan balances.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of this determination.

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(Authority: 20 U.S.C. 1087a *et seq.*)

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§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a Direct PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a Direct Consolidation Loan that was used to repay a Direct PLUS Loan or a FFEL PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on an eligible Direct Loan if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The Secretary discharges the obligation of a borrower and any endorser to make any further payments towards the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on a Direct PLUS Loan incurred on behalf of an eligible victim.

(ii) The Secretary discharges the obligation of the borrower and any endorser to make any further payments towards the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim.

(4) The parent of an eligible public servant may qualify for a discharge of a Direct PLUS loan incurred on behalf of the eligible public servant, or the portion of a Direct Consolidation Loan that repaid a Direct or FFEL PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(4) of this section, the Secretary discharges—

(i) A Direct Loan owed by the spouse of an eligible public servant;

(ii) A Direct PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the Secretary suspends collection activity on the borrower's eligible Direct Loans and requests that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the Secretary determines that the borrower does not qualify for a discharge under this section, or the Secretary does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the Secretary that the borrower claims to qualify for a discharge, the Secretary resumes collection and grants forbearance of payment of both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application for the discharge has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection on the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(4) If the Secretary determines that the borrower qualifies for a discharge under this section, the Secretary notifies the borrower that the loan has been discharged or, in the case of a partial discharge of a Direct Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Direct Consolidation Loan, the Secretary returns to the sender any payments received by the Secretary after the date the loan was discharged.

(5) The Secretary discharges a Direct Loan owed by an eligible victim or an eligible public servant under the procedures in §685.212 for a discharge based on death or under the procedures in §685.213 for a discharge based on a total and permanent disability.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a Direct Loan, a FFEL Program Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the Secretary, the lender, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii) or (d)(3), and (d)(2)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on another Direct Loan, a FFEL Program Loan, or a Perkins Loan because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on another Direct Loan or a FFEL Program Loan because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) The Secretary may discharge the loan based on other reliable documentation that establishes, to the Secretary's satisfaction, that the eligible public servant or the eligible victim

died due to injuries suffered in the September 11, 2001 attacks. The Secretary discharges a loan based on documentation other than the documentation specified in paragraphs (d)(1) through (d)(5) of this section only under exceptional circumstances and on a case-by-case basis.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 72 hours of the injury having been sustained or within 72 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan, or another Direct Loan because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) The Secretary may require the borrower to submit additional information that the Secretary deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint Direct Loan or FFEL Consolidation Loan applications or an approved Direct or FFEL PLUS Loan application.

(g) *Limitations on discharge.* (1) Only outstanding Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans and Direct Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Direct Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2)(i) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Direct Loan prior to the date the loan was discharged.

(ii) A borrower may apply for a partial discharge of a joint Direct Consolidation loan due to death or total and permanent disability under the procedures in § 685.212(a) or § 685.213. If the borrower is granted a partial discharge under the procedures in § 685.212(a) or § 685.213 the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1) or § 685.212(g)(2).

(iii) A borrower may apply for a discharge of a Direct PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 685.212(a). If a borrower is granted a discharge under the procedures in § 685.212(a), the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1).

(3) A determination that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 685.213.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a Direct PLUS Loan or on a Direct Consolidation Loan that was used to repay a Direct Loan or FFEL Program PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78083, Dec. 28, 2006, as amended at 72 FR 55054, Sept. 28, 2007; 78 FR 65836, Nov. 1, 2013]

§ 685.219 Public Service Loan Forgiveness Program.

(a) *General.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2612(a)(1) and (3) is not considered in determining the average hours worked on an annual or contract basis.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress.

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means ''active duty'' service or ''full-time National Guard duty'' as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, ''Military service'' means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that—

(i) Is exempt from taxation under section 501(a) of the Internal Revenue Code; and

(ii) Is not an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing;

(4) A Tribal college or university; or

(5) A private organization that—

(i) 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

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) *Borrower eligibility*. (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(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;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps position or who qualifies for partial repayment of his or her loans under the

student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209;

(C) A standard repayment plan, as determined in accordance with § 685.208(b); or

(D) Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).

(2) If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,, the Secretary will consider the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

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

(d) *Forgiveness Amount.* The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) *Application.* (1) After making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(Authority: 20 U.S.C. 1087e(m))

[73 FR 63256, Oct. 23, 2008, as amended at 74 FR 56005, Oct. 29, 2009; 77 FR 76414, Dec. 28, 2012; 80 FR 67242, Oct. 30, 2015]

§ 685.220 Consolidation.

(a) *Direct Consolidation Loans.* A borrower may consolidate education loans made under certain Federal programs into a Direct Consolidation Loan. Loans consolidated into a Direct Consolidation Loan are discharged when

the Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Direct Consolidation Loan:

(1) Subsidized Federal Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Direct Subsidized Loans.

(5) Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Direct PLUS Loans.

(12) Direct PLUS Consolidation Loans.

(13) Federal Consolidation Loans.

(14) Unsubsidized Federal Stafford Loans.

(15) Federal Supplemental Loans for Students (SLS).

(16) Direct Unsubsidized Loans.

(17) Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.

(20) Health Education Assistance Loans (HEAL).

(21) Nursing loans made under part E of title VIII of the Public Health Service Act.

(c) *Components of Direct Consolidation Loans.* (1) *Subsidized component of Direct Consolidation Loans.* The term ''Direct Subsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(1) through (b)(5) of this section; and

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act.

(2) *Unsubsidized component of Direct Consolidation Loans.* Except as provided in paragraph (c)(3) of this section, the term ''Direct Unsubsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(6) through (b)(12) of this section;

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is not eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act; and

(iii) The loans identified in paragraphs (b)(14) through (b)(21) of this section.

(3) *PLUS component of Direct Consolidation Loans.* In the case of a Direct Consolidation Loan made before July 1, 2006, the term ''Direct PLUS Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (b)(12) of this section.

(d) *Eligibility for a Direct Consolidation Loan.* (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) On the loans being consolidated, the borrower is—

(A) At the time the borrower applies for the Direct Consolidation Loan—

(*1*) In the grace period;

(*2*) In a repayment period but not in default; or

(*3*) In default but has made satisfactory repayment arrangements in accordance with paragraph (2) of the definition of that term in § 685.102(b);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(ii) The borrower agrees to notify the Secretary of any change in address.

(2) A borrower may not consolidate a Direct Consolidation Loan or a Federal Consolidation Loan into a new consolidation loan under this section unless at least one additional eligible loan is included in the consolidation, except that a borrower may consolidate a Federal Consolidation Loan into a new consolidation loan under this section without including any additional loans if—

(i) The borrower has a Federal Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income-contingent repayment plan or an income-based repayment plan; or

(ii) The borrower has a Federal Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for the purpose of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.

(3) Eligible loans received before or after the date a Direct Consolidation Loan is made may be added to a subsequent Direct Consolidation Loan.

(e) *Application for a Direct Consolidation Loan.* To obtain a Direct Consolidation Loan, a borrower must submit a completed application to the Secretary. A borrower may add eligible loans to a Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1)(i) The holder of a loan that a borrower wishes to consolidate into a Direct Loan must complete and return the Secretary's request for certification of the amount owed within 10 business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

(ii) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation the amount necessary to discharge the loan.

(iii) For a Direct Loan Program or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan must promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consolidated loan must notify the borrower that the loan has been paid in full.

(3) The principal balance of a Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge that loan, the holder of the consolidated loan must promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge that loan, the holder must notify the Secretary in writing of the remaining amount due on the loan. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in § 685.202(a)(10)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(10)(ii).

(h) *Repayment plans.* A borrower may choose a repayment plan for a Direct Consolidation Loan in accordance with § 685.208, and may change repayment plans in accordance with § 685.210(b).

(i) *Repayment period.* (1) Except as noted in paragraph (i)(4) of this section, the repayment period for a Direct Consolidation Loan begins on the day the loan is disbursed.

(2)(i) *Borrowers who entered repayment before July 1, 2006.* The Secretary determines the repayment period under § 685.208(i) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i), (ii), and (iii) of this section.

(ii) Borrowers entering repayment on or after July 1, 2006. The Secretary determines the repayment period under

§ 685.208(j) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i) through (iii) of this section.

(3)(i) The total amount of outstanding balances on the other education loans used to determine the repayment period under §§ 685.208(i) and (j) may not exceed the amount of the Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(4) A Direct Consolidation Loan that was made based on an application received before July 1, 2006 receives a grace period if it includes a Direct Loan Program or FFEL Program loan for which the borrower was in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

(j) *Repayment schedule.* (1) The Secretary provides a borrower of a Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (e) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds and returns of title IV, HEA program funds received from schools.* If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender must transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

(l) *Special provisions for joint consolidation loans.* The provisions of paragraphs (l)(1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers in accordance with the regulations that were in effect for consolidation applications received prior to July 1, 2006.

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the borrower's death, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date the borrower became totally and permanently disabled, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1078–8, 1087a *et seq.*)

[78 FR 65836, Nov. 1, 2013, as amended at 81 FR 76083, Nov. 1, 2016]

§ 685.221 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

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

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *New borrower* means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

(5) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent or, for a new borrower, 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent or, for a new borrower, 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(6) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Terms of the repayment plan.* (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 15 percent or, for a new borrower, 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

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

(i) Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total

outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(ii) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

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

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

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

(iii) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

(4) Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(5) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The Secretary applies any payment made under the income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

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

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

(4) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2)(i) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(A) For a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan, the time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(B) For a Direct Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 685.208(j) and the amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(ii) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2)(i) of this section may request a change to a different repayment plan after making one monthly payment under the Direct Loan standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for accepting smaller payments than previously scheduled, in accordance with § 685.205(a).

(e) *Eligibility documentation, verification, and notifications.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i) Provide documentation, acceptable to the Secretary, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income; and

(iii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment

amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification provides the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(4) of this section.

(4) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid interest will be capitalized in accordance with paragraph (b)(4) of this section; and

(iii) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (b)(1) of this section and sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(8) If the Secretary receives the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section

within 10 days of the specified annual deadline—

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

(A) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(1) of this section.

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

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

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

(9)(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

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

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during the applicable loan forgiveness period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (b)(2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(iii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) with a 10-year repayment period.

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Made monthly payments under a Direct Loan income-contingent repayment plan, including a calculated monthly payment amount of $0.00.

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

(vii) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(iii) of this section; and

(ii)(A) The borrower made those monthly payments each year for the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the applicable loan forgiveness period is—

(i) If the borrower made payments under the income-contingent repayment plan, the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994; or

(ii) If the borrower did not make payments under one of the repayment plans described in paragraph (f)(3)(i) of this section—

(A) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (f)(3)(ii)(B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements in paragraph (f)(1) of this section; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (f)(3)(ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan.

(4) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the applicable loan forgiveness period.

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

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

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

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

(ii) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (f) of

this section and does not require the borrower to submit a request for loan forgiveness.

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

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

(B) Provides the borrower with the information described in paragraph (f)(5)(i)(C) of this section; and

(C) Returns to the sender any payment received on a loan after loan forgiveness has been granted in accordance with paragraph (f)(5)(i) of this section.

(Authority: 20 U.S.C. 1098e)

[73 FR 63258, Oct. 23, 2008, as amended at 74 FR 56006, Oct. 29, 2009; 77 FR 66145, Nov. 1, 2012; 80 FR 67242, Oct. 30, 2015]

§ 685.222 Borrower defenses.

(a) *General.* (1) For loans first disbursed prior to July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with the provisions of § 685.206(c), unless otherwise noted in § 685.206(c).

(2) For loans first disbursed on or after July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with this section. To establish a borrower defense under this section, a preponderance of the evidence must show that the borrower has a borrower defense that meets the requirements of this section.

(3) A violation by the school of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under either this section or § 685.206(c) unless the violation would otherwise constitute a basis for a borrower defense under this section or § 685.206(c), as applicable.

(4) For the purposes of this section and § 685.206(c), ''borrower'' means—

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(5) For the purposes of this section and § 685.206(c), a ''borrower defense'' refers to an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and

(ii) A right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(6) If the borrower asserts both a borrower defense and any other objection to an action of the Secretary with regard to that Direct Loan, the order in which the Secretary will consider objections, including a borrower defense, will be determined as appropriate under the circumstances.

(b) *Judgment against the school.* The borrower has a borrower defense if the borrower, whether as an individual or as a member of a class, or a governmental agency, has obtained against the school a nondefault, favorable contested judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction. A borrower may assert a borrower defense under this paragraph at any time.

(c) *Breach of contract by the school.* The borrower has a borrower defense if the school the borrower received the Direct Loan to attend failed to perform its obligations under the terms of a contract with the student. A borrower may assert a defense to repayment of amounts owed to the Secretary under this paragraph at any time after the breach by the school of its contract with the student. A borrower may assert a right to recover amounts previously collected by the Secretary under this paragraph not later than six years after the breach by the school of its contract with the student.

(d) *Substantial misrepresentation by the school.* (1) A borrower has a borrower defense if the school or any of its representatives, or any institution, organization, or person with whom the school has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation in accordance with 34 CFR part 668, subpart F, that the borrower reasonably relied on to

the borrower's detriment when the borrower decided to attend, or to continue attending, the school or decided to take out a Direct Loan. A borrower may assert, at any time, a defense to repayment under this paragraph (d) of amounts owed to the Secretary. A borrower may assert a claim under this paragraph (d) to recover funds previously collected by the Secretary not later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.

(2) For the purposes of this section, a designated Department official pursuant to paragraph (e) of this section or a hearing official pursuant to paragraph (f), (g), or (h) of this section may consider, as evidence supporting the reasonableness of a borrower's reliance on a misrepresentation, whether the school or any of the other parties described in paragraph (d)(1) engaged in conduct such as, but not limited to:

(i) Demanding that the borrower make enrollment or loan-related decisions immediately;

(ii) Placing an unreasonable emphasis on unfavorable consequences of delay;

(iii) Discouraging the borrower from consulting an adviser, a family member, or other resource;

(iv) Failing to respond to the borrower's requests for more information including about the cost of the program and the nature of any financial aid; or

(v) Otherwise unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication.

(e) *Procedure for an individual borrower.* (1) To assert a borrower defense under this section, an individual borrower must—

(i) Submit an application to the Secretary, on a form approved by the Secretary—

(A) Certifying that the borrower received the proceeds of a loan, in whole or in part, to attend the named school;

(B) Providing evidence that supports the borrower defense; and

(C) Indicating whether the borrower has made a claim with respect to the information underlying the borrower defense with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(ii) Provide any other information or supporting documentation reasonably requested by the Secretary.

(2) Upon receipt of a borrower's application, the Secretary—

(i) If the borrower is not in default on the loan for which a borrower defense has been asserted, grants forbearance and—

(A) Notifies the borrower of the option to decline the forbearance and to continue making payments on the loan; and

(B) Provides the borrower with information about the availability of the income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; or

(ii) If the borrower is in default on the loan for which a borrower defense has been asserted—

(A) Suspends collection activity on the loan until the Secretary issues a decision on the borrower's claim;

(B) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume if the Secretary determines that the borrower does not qualify for a full discharge; and

(C) Notifies the borrower of the option to continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

(3) The Secretary designates a Department official to review the borrower's application to determine whether the application states a basis for a borrower defense, and resolves the claim through a fact-finding process conducted by the Department official.

(i) As part of the fact-finding process, the Department official notifies the school of the borrower defense application and considers any evidence or argument presented by the borrower and also any additional information, including—

(A) Department records;

(B) Any response or submissions from the school; and

(C) Any additional information or argument that may be obtained by the Department official.

(ii) Upon the borrower's request, the Department official identifies to the borrower the records the Department official considers relevant to the borrower defense. The Secretary provides to the borrower any of the identified records upon reasonable request of the borrower.

(4) At the conclusion of the fact-finding process, the Department official issues a written decision as follows:

(i) If the Department official approves the borrower defense in full or in part, the Department official notifies the borrower in writing of that determination and of the relief provided as described in paragraph (i) of this section.

(ii) If the Department official denies the borrower defense in full or in part, the Department official notifies the borrower of the reasons for the denial, the evidence that was relied upon, any portion of the loan that is due and payable to the Secretary, and whether the Secretary will reimburse any amounts previously collected, and informs the borrower that if any balance remains on the loan, the loan will return to its status prior to the borrower's submission of the application. The Department official also informs the borrower of the opportunity to request reconsideration of the claim based on new evidence pursuant to paragraph (e)(5)(i) of this section.

(5) The decision of the Department official is final as to the merits of the claim and any relief that may be granted on the claim. Notwithstanding the foregoing—

(i) If the borrower defense is denied in full or in part, the borrower may request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. ''New evidence'' is relevant evidence that the borrower did not previously provide and that was not identified in the final decision as evidence that was relied upon for the final decision. If accepted for reconsideration by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans; and

(ii) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(6) The Secretary may consolidate applications filed under this paragraph (e) that have common facts and claims, and resolve the borrowers' borrower defense claims as provided in paragraphs (f), (g), and (h) of this section.

(7) The Secretary may initiate a proceeding to collect from the school the amount of relief resulting from a borrower defense under this section—

(i) Within the six-year period applicable to the borrower defense under paragraph (c) or (d) of this section;

(ii) At any time, for a borrower defense under paragraph (b) of this section; or

(iii) At any time if during the period described in paragraph (e)(7)(i) of this section, the institution received notice of the claim. For purposes of this paragraph, notice includes receipt of—

(A) Actual notice from the borrower, a representative of the borrower, or the Department of a claim, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c);

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this section or § 685.206(c).

(f) *Group process for borrower defense, generally.* (1) Upon consideration of factors including, but not limited to, common facts and claims, fiscal impact, and the promotion of compliance by the school or other title IV, HEA program participant, the Secretary may initiate a process to determine whether

a group of borrowers, identified by the Secretary, has a borrower defense.

(i) The members of the group may be identified by the Secretary from individually filed applications pursuant to paragraph (e)(6) of this section or from any other source.

(ii) If the Secretary determines that there are common facts and claims that apply to borrowers who have not filed an application under paragraph (e) of this section, the Secretary may identify such borrowers as members of a group.

(2) Upon the identification of a group of borrowers under paragraph (f)(1) of this section, the Secretary—

(i) Designates a Department official to present the group's claim in the fact-finding process described in paragraph (g) or (h) of this section, as applicable;

(ii) Provides each identified member of the group with notice that allows the borrower to opt out of the proceeding;

(iii) If identified members of the group are borrowers who have not filed an application under paragraph (f)(1)(ii) of this section, follows the procedures in paragraph (e)(2) of this section for granting forbearance and for defaulted loans for such identified members of the group, unless an opt-out by such a member of the group is received; and

(iv) Notifies the school of the basis of the group's borrower defense, the initiation of the fact-finding process described in paragraph (g) or (h) of this section, and of any procedure by which the school may request records and respond. No notice will be provided if notice is impossible or irrelevant due to a school's closure.

(3) For a group of borrowers identified by the Secretary, for which the Secretary determines that there may be a borrower defense under paragraph (d) of this section based upon a substantial misrepresentation that has been widely disseminated, there is a rebuttable presumption that each member reasonably relied on the misrepresentation.

(g) *Procedures for group process for borrower defenses with respect to loans made to attend a closed school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to a Direct Loan to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses arising from borrower defenses, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses—

(1) A hearing official resolves the borrower defense through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official also considers any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described in §668.174(b), if practicable. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision states that determination and the relief provided on the basis of that claim as determined under paragraph (i) of this section.

(ii) If the hearing official denies the borrower defense in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that if any balance remains on the loan, the loan will return to its status prior to the group claim process.

(iii) The Secretary provides copies of the written decision to the members of the group and, as practicable, to the school.

(2) The decision of the hearing official is final as to the merits of the group borrower defense and any relief that may be granted on the group claim.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to

paragraph (g)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(h) *Procedures for group process for borrower defenses with respect to loans made to attend an open school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to Direct Loans to attend a school that is not covered by paragraph (g) of this section, the claim is resolved in accordance with the procedures in this paragraph (h).

(1) A hearing official resolves the borrower defense and determines any liability of the school through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision establishes the basis for the determination, notifies the members of the group of the relief as described in paragraph (i) of this section, and notifies the school of any liability to the Secretary for the amounts discharged and reimbursed.

(ii) If the hearing official denies the borrower defense for the group in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that their loans will return to their statuses prior to the group borrower defense process. The decision notifies the school of any liability to the Secretary for any amounts discharged or reimbursed.

(iii) The Secretary provides copies of the written decision to the members of the group, the Department official, and the school.

(2) The decision of the hearing official becomes final as to the merits of the group borrower defense and any relief that may be granted on the group borrower defense within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official appeals the decision to the Secretary. In the case of an appeal—

(i) The decision of the hearing official does not take effect pending the appeal; and

(ii) The Secretary renders a final decision.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (h)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(5)(i) The Secretary collects from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers under this paragraph (h).

(ii) For a borrower defense under paragraph (b) of this section, the Secretary may initiate a proceeding to collect at any time.

(iii) For a borrower defense under paragraph (c) or (d) of this section, the Secretary may initiate a proceeding to collect within the limitation period that would apply to the borrower defense, provided that the Secretary may bring an action to collect at any time if, within the limitation period, the school received notice of the borrower's borrower defense claim. For purposes of this paragraph, the school receives

notice of the borrower's claim by receipt of—

(A) Actual notice of the claim from the borrower, a representative of the borrower, or the Department, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c); or

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, of underlying facts that may form the basis of a claim under this section or § 685.206(c).

(i) *Relief.* If a borrower defense is approved under the procedures in paragraph (e), (g), or (h) of this section, the following procedures apply:

(1) The Department official or the hearing official deciding the claim determines the appropriate amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount.

(2) For a borrower defense brought on the basis of—

(i) A substantial misrepresentation, the Department official or the hearing official will factor the borrower's cost of attendance to attend the school, as well as the value of the education the borrower received, the value of the education that a reasonable borrower in the borrower's circumstances would have received, and/or the value of the education the borrower should have expected given the information provided by the institution, into the determination of appropriate relief. A borrower may be granted full, partial, or no relief. Value will be assessed in a manner that is reasonable and practicable. In addition, the Department official or the hearing official deciding the claim may consider any other relevant factors;

(ii) A judgment against the school—

(A) Where the judgment awards specific financial relief, relief will be the amount of the judgment that remains unsatisfied, subject to the limitation provided for in § 685.222(i)(8) and any other reasonable considerations; and

(B) Where the judgment does not award specific financial relief, the Department will rely on the holding of the case and applicable law to monetize the judgment; and

(iii) A breach of contract, relief will be determined according to the common law of contracts, subject to the limitation provided for in § 685.222(i)(8) and any other reasonable considerations.

(3) In a fact-finding process brought against an open school under paragraph (h) of this section on the basis of a substantial misrepresentation, the school has the burden of proof as to any value of the education.

(4) In determining the relief, the Department official or the hearing official deciding the claim may consider—

(i) Information derived from a sample of borrowers from the group when calculating relief for a group of borrowers; and

(ii) The examples in Appendix A to this subpart.

(5) In the written decision described in paragraphs (e), (g), and (h) of this section, the designated Department official or hearing official deciding the claim notifies the borrower of the relief provided and—

(i) Specifies the relief determination;

(ii) Advises that there may be tax implications; and

(iii) Advises the borrower of the requirements to file a request for reconsideration upon the identification of new evidence.

(6) Consistent with the determination of relief under paragraph (i)(1) of this section, the Secretary discharges the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, reimburses the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(7) The Department official or the hearing official deciding the case, or the Secretary as applicable, affords the

borrower such further relief as appropriate under the circumstances. Such further relief includes, but is not limited to, one or both of the following:

(i) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(ii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(8) The total amount of relief granted with respect to a borrower defense cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

(j) *Cooperation by the borrower.* To obtain relief under this section, a borrower must reasonably cooperate with the Secretary in any proceeding under paragraph (e), (g), or (h) of this section. The Secretary may revoke any relief granted to a borrower who fails to satisfy his or her obligations under this paragraph (j).

(k) *Transfer to the Secretary of the borrower's right of recovery against third parties.* (1) Upon the granting of any relief under this section, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense and for the same loan for which the discharge was granted under this section.

(2) The provisions of this paragraph (k) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this paragraph (k) limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this paragraph (k) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(Authority: 20 U.S.C. 1087a *et seq.;* 28 U.S.C. 2401; 31 U.S.C. 3702)

[81 FR 76083, Nov. 1, 2016]

EFFECTIVE DATE NOTE: At 81 FR 76083, Nov. 1, 2016, § 685.222 was added, eff. July 1, 2017. At 82 FR 27621, June 16, 2017, the effective date was delayed indefinitely.

§ 685.223 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

[81 FR 76086, Nov. 1, 2016]

APPENDIX A TO SUBPART B OF PART 685—EXAMPLES OF BORROWER RELIEF

The Department official or the hearing official deciding a borrower defense claim determines the amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. The following are some conceptual examples demonstrating relief. The actual relief awarded will be determined by the Department official or the hearing official deciding the claim, who shall not be bound by these examples.

1. A school represents to prospective students, in widely disseminated materials, that its educational program will lead to employment in an occupation that requires State licensure. The program does not in fact meet minimum education requirements to enable its graduates to sit for the exam necessary for them to obtain licensure. The claims are adjudicated in a group process.

Appropriate relief: Borrowers who enrolled in this program during the time that the misrepresentation was made should receive full relief. As a result of the schools' misrepresentation, the borrowers cannot work in the occupation in which they reasonably expected to work when they enrolled. Accordingly, borrowers received limited or no value from this educational program because they did not receive the value that they reasonably expected.

2. A school states to a prospective student that its medical assisting program has a faculty composed of skilled nurses and physicians and offers internships at a local hospital. The borrower enrolls in the school in reliance on that statement. In fact, none of the teachers at the school other than the Director is a nurse or physician. The school has no internship program. The teachers at the school are not qualified to teach medical assisting and the student is not qualified for medical assistant jobs based on the education received at the school.

Appropriate relief: This borrower should receive full relief. None of the teachers at the school are qualified to teach medical assisting, and there was no internship. In contrast to reasonable students' expectations, based on information provided by the school, the typical borrower received no value from the program.

3. An individual interested in becoming a registered nurse meets with a school's admissions counselor who explains that the school does not have a nursing program but that completion of a medical assisting program is a prerequisite for any nursing program. Based on this information, the borrower enrolls in the school's medical assisting program rather than searching for another nursing program, believing that completing a medical assisting program is a necessary step towards becoming a nurse. After one year in the program, the borrower realizes that it is not necessary to become a medical assistant before entering a nursing program. The borrower's credits are not transferrable to a nursing program.

Appropriate relief: This borrower should receive full relief. Because it is not necessary to become a medical assistant prior to entering a nursing program, she has made no progress towards the career she sought, and in fact has received an education that cannot be used for its intended purpose.

4. A school tells a prospective student, who is actively seeking an education, that the cost of the program will be $20,000. Relying on that statement, the borrower enrolls. The student later learns the cost for that year was $25,000. There is no evidence of any other misrepresentations in the enrollment process or of any deficiency in value in the school's education.

Appropriate relief: This borrower should receive partial relief of $5,000. The borrower received precisely the value that she expected. The school provides the education that the student was seeking but misrepresented the price.

5. A school represents in its marketing materials that three of its undergraduate faculty members in a particular program have received the highest award in their field. A borrower choosing among two comparable, selective programs enrolls in that program in reliance on the representation about its faculty. However, although the program otherwise remains the same, the school had failed to update the marketing materials to reflect the fact that the award-winning faculty had left the school.

Appropriate relief: Although the borrower reasonably relied on a misrepresentation about the faculty in deciding to enroll at this school, she still received the value that she expected. Therefore, no relief is appropriate.

6. An individual wishes to enroll in a selective, regionally accredited liberal arts school. The school gives inflated data to a well-regarded school ranking organization regarding the median grade point average of recent entrants and also includes that inflated data in its own marketing materials. This inflated data raises the place of the school in the organization's rankings in independent publications. The individual enrolls in the school and graduates. Soon after graduating, the individual learns from the news that the school falsified admissions data. Notwithstanding this issue, degrees from the school continue to serve as effective, well-regarded liberal arts credentials.

The Department also determines that the school violated the title IV requirement that it not make substantial misrepresentations pursuant to 34 CFR 668.71, which constitutes an enforceable violation separate and apart from any borrower defense relief.

Appropriate Relief: The borrower relied on the misrepresentation about the admissions data to his detriment, because the misrepresentation factored into the borrower's decision to choose the school over others. However, the borrower received a selective liberal arts education which represents the value that he could reasonably expect, and gets no relief.

[81 FR 76086, Nov. 1, 2016]

EFFECTIVE DATE NOTE: At 81 FR 76086, Nov. 1, 2016, appendix A to subpart B of part 685 was added, eff. July 1, 2017. At 82 FR 27621,

June 16, 2017, the effective date was delayed indefinitely.

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) *General.* Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(2) Enter into a written program participation agreement with the Secretary.

(b) *Program participation agreement.* In the program participation agreement, the school must promise to comply with the Act and applicable regulations and must agree to—

(1) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(2) Estimate the need of each of these students as required by part F of the Act for an academic year. For purposes of estimating need, a Direct Unsubsidized Loan, a Direct PLUS Loan, or any loan obtained under any State-sponsored or private loan program may be used to offset the expected family contribution of the student for that year;

(3) Certify that the amount of the loan for any student under part D of the Act is not in excess of the annual limit applicable for that loan program and that the amount of the loan, in combination with previous loans received by the borrower, is not in excess of the aggregate limit for that loan program;

(4) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act;

(5) On a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary;

(6) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—

(i) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school;

(ii) Upon request by the Secretary, concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(iii) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(7) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(8) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(9) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act or any benefits associated with such a loan; and

(11) Comply with the provisions of paragraphs (d) through (i) of this section regarding student claims and disputes.

(12) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* A school that originates loans in the Direct Loan Program must originate loans to eligible

students and parents in accordance with part D of the Act. The note or evidence of the borrower's obligation on the loan originated by the school is the property of the Secretary.

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on a borrower defense claim through an internal dispute process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school will not seek to rely in any way on a predispute arbitration agreement or on any other predispute agreement with a student who has obtained or benefited from a Direct Loan, with respect to any aspect of a class action that is related to a borrower defense claim, including to seek a stay or dismissal of particular claims or the entire action, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a predispute arbitration agreement, or on any other predispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action.

(ii) Seeking to exclude a person or persons from a class in a class action.

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action.

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action.

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved.

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court in that class action has granted a motion to dismiss the claim and, in doing so, the court noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) *Required provisions and notices.* (i) The school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding predispute arbitration or any other predispute agreement addressing class actions and that are entered into after the effective date of this regulation: ''We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a predispute arbitration agreement or any other predispute agreement addressing class actions has been entered into before the effective date of this regulation and does not contain a provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (e)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (e)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision specified in paragraph (e)(3)(iii)(A) or must provide the notice specified in paragraph

(e)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.* ''We agree that neither we nor anyone else who later becomes a party to this agreement will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit in court even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any predispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(f) *Predispute arbitration agreements.* (1)(i) The school will not enter into a predispute agreement to arbitrate a borrower defense claim, or rely in any way on a predispute arbitration agreement with respect to any aspect of a borrower defense claim.

(ii) A student may enter into a voluntary post-dispute arbitration agreement with a school to arbitrate a borrower defense claim.

(2) Reliance on a predispute arbitration agreement with a student with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student, including joinder with others in an action;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) *Required provisions and notices.* (i) The school must include the following provision in any predispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after the effective date of this regulation: ''We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a predispute arbitration agreement has been entered into before the effective date of this regulation that did not contain the provision specified in paragraph (f)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or must provide the notice specified in paragraph (f)(3)(iii)(B) of this section to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.* ''We agree that neither we nor anyone else who later becomes a party to this predispute arbitration agreement will use it to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any predispute arbitration agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit regarding such a claim or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Direct Loan or the provision of educational services for which the loan was obtained.''

(g) *Submission of arbitral records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in arbitration by or against the school concerning a borrower defense claim:

(i) The initial claim and any counterclaim.

(ii) The arbitration agreement filed with the arbitrator or arbitration administrator.

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator.

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or arbitration administrator related to such a refusal.

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a predispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) A school must submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitrator, the arbitration administrator, or the student.

(h) *Submission of judicial records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim concerning a borrower defense claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school:

(i) The complaint and any counterclaim.

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court.

(2) A school must submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing

or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) ''Borrower defense claim'' means a claim that is or could be asserted as a borrower defense as defined in § 685.222(a)(5), including a claim other than one based on § 685.222(c) or (d) that may be asserted under § 685.222(b) if reduced to judgment;

(2) ''Class action'' means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(3) ''Dispositive motion'' means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) ''Predispute arbitration agreement'' means any agreement, regardless of its form or structure, between a school or a party acting on behalf of a school and a student providing for arbitration of any future dispute between the parties.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58970, Nov. 1, 1999; 71 FR 64400, Nov. 1, 2006; 78 FR 65838, Nov. 1, 2013; 81 FR 76087, Nov. 1, 2016]

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount.* (1) A school participating in the Direct Loan Program must ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school must originate a Direct Loan while the student meets the borrower eligibility requirements of § 685.200. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made by the borrower and, in the case of a parent Direct PLUS Loan borrower, the student and the parent borrower.

(2) A school must provide to the Secretary borrower information that includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.200 and § 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds, as determined in accordance with § 685.303(d).

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan, but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must—

(i) Notify the graduate or professional student borrower of the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment; and

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

(4) A school may not originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student's estimated cost of attendance less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(5)(i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with § 685.203.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school originates the loan.

(6) The date of loan origination is the date a school creates the electronic loan origination record.

(7) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

(8) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

(9) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information or for the origination of a Direct Loan.

(10)(i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or that has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(10)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school from another school and the prior school originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

(iv) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year

in which the borrower regained eligibility.

(b) *Promissory note handling.* (1) The Secretary provides promissory notes for use in the Direct Loan Program. A school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

(c) *Reporting to the Secretary.* The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution. (Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[78 FR 65838, Nov. 1, 2013]

§ 685.302 [Reserved]

§ 685.303 Processing loan proceeds.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan proceeds. The school must also comply with any rules for processing loan proceeds contained in 34 CFR part 668.

(b) *General*—(1) A school may not disburse loan proceeds to a borrower unless the borrower has executed a legally enforceable promissory note.

(2) The Secretary provides Direct Loan funds to a school in accordance with 34 CFR 668.162.

(3)(i) Except in the case of a late disbursement under paragraph (f) of this section, or as provided in paragraph (b)(3)(iii) of this section, a school may disburse loan proceeds only to a student, or a parent in the case of a Direct PLUS Loan obtained by a parent borrower, if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period for which the loan was intended.

(ii) If a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirements under paragraph (b)(4) of this section.

(iii) If, after a school makes the first disbursement to a borrower, the student becomes ineligible due solely to the school's loss of eligibility to participate in the title IV programs or the Direct Loan Program, the school may make subsequent disbursements to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to making any disbursement to a borrower, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make a disbursement and any subsequent disbursement to the student if the school determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(4) If a student does not begin attendance in the period of enrollment, disbursed loan proceeds must be handled in accordance with 34 CFR 668.21.

(5)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Subsidized or Unsubsidized Federal Stafford Loan, or a Federal Supplemental Loan for Students, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A)(*1*) Except as provided in paragraph (b)(5)(i)(A)(*2*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668, or weighted average cohort rate of less than 10 percent for each of the

three most recent fiscal years for which data are available; or

(*2*) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (b)(5)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (b)(5)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (b)(5)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(c) *Processing of the proceeds of a Direct Loan.* Schools must follow the procedures for disbursing funds in 34 CFR 668.164.

(d) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school must determine that all information required by the promissory note has been provided by the borrower and, if applicable, the student.

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (d)(4) or (d)(6) of this section applies—

(i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under §685.301(a)(10)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(B) For a loan originated under §685.301(a)(10)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods.

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(6)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*)(*i*) Except as provided in paragraph (d)(6)(i)(A)(*2*)(*ii*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*ii*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study

abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than five percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (d)(6)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (d)(6)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (d)(6)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(e) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(f) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

(g) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct PLUS Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible (except for Federal Work-Study Program funds up to $300), the school must reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized Loan, Direct PLUS Loan, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

(Approved by the Office of Management and Budget under control number 1840–0672)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 61 FR 29901, June 12, 1996; 61 FR 60610, Nov. 29, 1996; 64 FR 58971, Nov. 1, 1999; 65 FR 65651, Nov. 1, 2000; 66 FR 34766, June 29, 2001; 68 FR 75430, Dec. 31, 2003; 71 FR 45717, Aug. 9, 2006; 71 FR 64400, Nov. 1, 2006; 72 FR 62033, Nov. 1, 2007; 74 FR 55666, Oct. 28, 2009; 75 FR 67200, Nov. 1, 2010; 78 FR 65839, Nov. 1, 2013]

§ 685.304 Counseling borrowers.

(a) *Entrance counseling.* (1) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized or Unsubsidized Federal Stafford Loan, or Federal SLS Loan.

(2) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior student Direct PLUS Loan or student Federal PLUS Loan.

(3) Entrance counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and graduate or professional student Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session, conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(6) Entrance counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

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

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records;

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan; and

(xiii) For first-time borrowers as defined in § 685.200(f)(1)(i), explain the limitation on eligibility for Direct Subsidized Loans and possible borrower responsibility for accruing interest described in § 685.200(f), including—

(A) The possible loss of eligibility for additional Direct Subsidized Loans;

(B) How a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated;

(C) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans; and

(D) The impact of borrower responsibility for accruing interest on the borrower's total debt.

(7) Entrance counseling for graduate or professional student Direct PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, of student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student Direct PLUS Loan borrower who has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in § 685.301(a)(3)(i)(A) through (a)(3)(i)(C); and

(iv) For a graduate or professional student Direct PLUS Loan borrower who has not received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

(8) A school may adopt an alternative approach for entrance counseling as part of the school's quality assurance plan described in § 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1) through (a)(7) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to entrance counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraphs (a)(6)(i) through (a)(6)(v) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach.

These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(9) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower and graduate or professional student Direct PLUS Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must, within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required, be provided either through interactive electronic means, by mailing written counseling materials to the student borrower at the student borrower's last known address, or by sending written counseling materials to an email address provided by the student borrower that is not an email address associated with the school sending the counseling materials.

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options including the standard repayment, extended repayment, graduated repayment, income-contingent repayment, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

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

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

(A) The effects of consolidation on total interest to be paid, fees 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;

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

(D) That borrower benefit programs may vary among different lenders;

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

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section;

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

(ix) Provide—

(A) A general description of the terms and conditions under which a

borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV 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;

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student 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;

(xii) Explain to first-time borrowers, as defined in § 685.200(f)(1)(i)—

(A) How the borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are determined under § 685.200(f);

(B) The sum of the borrower's subsidized usage periods, as determined under § 685.200(f)(1)(iii), at the time of the exit counseling;

(C) The consequences of continued borrowing or enrollment, including—

(*1*) The possible loss of eligibility for additional Direct Subsidized Loans; and

(*2*) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans;

(D) The impact of the borrower becoming responsible for accruing interest on total student debt;

(E) That the Secretary will inform the student borrower of whether he or she is responsible for accruing interest on his or her Direct Subsidized Loans; and

(F) That the borrower can access NSLDS to determine whether he or she is responsible for accruing interest on any Direct Subsidized Loans as provided in § 685.200(f)(3);

(xiii) A general description of the types of tax benefits that may be available to borrowers; and

(xiv) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(xiii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(8)(i) For students who have received loans under both the FFEL Program and the Direct Loan Program for attendance at a school, the school's compliance with the exit counseling requirements in paragraph (b) of this section satisfies the exit counseling requirements in 34 CFR 682.604(a) if the school ensures that the exit counseling also provides the borrower with the information described in 34 CFR 682.604(a)(2)(i) and (ii).

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of paragraph (b) of this section and, for students who have also received FFEL Program loans for attendance at the school, 34 CFR 682.604(a).

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority:20 U.S.C. 1087a *et seq.*)

[74 FR 55666, Oct. 28, 2009, as amended at 78 FR 28986, May 16, 2013; 78 FR 65841, Nov. 1, 2013]

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school must use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

(Authority: 20 U.S.C. 1087 *et seq.*)

[64 FR 59044, Nov. 1, 1999, as amended at 78 FR 65841, Nov. 1, 2013]

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and

(2) Must provide simultaneous written notice to the borrower if the school pays a refund or return of title IV, HEA program funds to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund or return of title IV, HEA program funds.* In determining the portion of a student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school must follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

(Authority: 20 U.S.C. 1087a *et seq.*)

[64 FR 59044, Nov. 1, 1999; 65 FR 37045, June 13, 2000, as amended at 78 FR 65841, Nov. 1, 2013]

§ 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may withdraw from the program by providing written notice to the Secretary.

(b) A participating school that intends to withdraw from the Direct Loan Program must give at least 60 days notice to the Secretary.

(c) Unless the Secretary approves an earlier date, the withdrawal is effective on the later of—

(1) 60 days after the school notifies the Secretary; or

(2) The date designated by the school.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 78 FR 65841, Nov. 1, 2013]

§ 685.308 Remedial actions.

(a) *General.* The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1087a *et seq.*)

EFFECTIVE DATE NOTE: At 81 FR 76089, Nov. 1, 2016, § 685.308 was amended by revising paragraph (a), eff. July 1, 2017. At 82 FR

27621, June 16, 2017, the effective date was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 685.308 Remedial actions.

(a) The Secretary collects from the school the amount of the losses the Secretary incurs and determines that the institution is liable to repay under § 685.206, § 685.214, § 685.215(a)(1)(i), (ii), (iii), (iv) or (v), § 685.216, or § 685.222 or that were disbursed—

(1) To an individual, because of an act or omission of the school, in amounts that the individual was not eligible to receive; or

(2) Because of the school's violation of a Federal statute or regulation.

* * * * *

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* A participating school must—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe prescribed by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

(c) *Record retention requirements.* An institution must follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school must follow accounting requirements in 34 CFR 668.24(b).

(e) *Direct Loan Program bank account.* Schools must follow the procedures for maintaining funds established in 34 CFR 668.163.

(f) *Division of functions.* Schools must follow the procedures for division of functions in 34 CFR 668.16(c).

(g) *Limit on use of funds.* Funds received by a school under this part may be used only to make Direct Loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Approved by the Office of Management and Budget under control number 1840–0672)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 61 FR 60493, Nov. 27, 1996; 61 FR 60610, Nov. 29, 1996; 78 FR 65841, Nov. 1, 2013]

§ 685.310 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

[81 FR 76089, Nov. 1, 2016]

Subpart D [Reserved]

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

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

SOURCE: 73 FR 35495, June 23, 2008, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 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 for at least four academic years within eight years of completing the program of study for which the student received the grant. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan) and must be repaid with interest.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.2 Definitions.

(a) Definitions for the following terms used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, (HEA) 34 CFR part 600:

Award year
Clock hour
Correspondence course
Credit hour
Eligible institution
Institution of higher education (institution)
Regular student
Secretary
State
Title IV, HEA program

(b) Definitions for the following terms used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Enrolled
Expected family contribution (EFC)
Full-time student
Graduate or professional student
Half-time student
HEA
Payment period
Three-quarter-time student
Undergraduate student
William D. Ford Federal Direct Loan (Direct Loan) Program

(c) Definitions for the following terms used in this part are in 34 CFR part 77:

Local educational agency (LEA)
State educational agency (SEA)

(d) Other terms used in this part are defined as follows:

Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year):

(1) 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.

(2) If a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

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

Annual award: The maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

Bilingual education: An educational program in which two languages are used to provide content matter instruction.

Elementary school: A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

English language acquisition: The process of acquiring English as a second language.

Full-time teacher: A teacher who meets the standard used by a State in defining full-time employment as a teacher. For an individual teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

High-need field: Includes the following:

(1) Bilingual education and English language acquisition.

(2) Foreign language.

(3) Mathematics.

(4) Reading specialist.

(5) Science.

(6) Special education.

(7) Another field documented as high-need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) in accordance with 34 CFR 682.210(q).

Highly-qualified: Has the meaning set forth in section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) or in section 602(10) of the Individuals With Disabilities Education Act.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC.

Numeric equivalent: (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing TEACH Grant eligibility. The institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.25 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar non-numeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale; and

(ii) For an eligible institution, the institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Post-baccalaureate program: A program of instruction for individuals who have completed a baccalaureate degree, that—

(1) Does not lead to a graduate degree;

(2) Consists of courses required by a State in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that it does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education; and

(3) Is treated as an undergraduate program of study for the purposes of title IV of the HEA.

Retiree: An individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Scheduled Award: The maximum amount of a TEACH Grant that a full-time student could receive for a year.

School serving low-income students (low-income school): An elementary or secondary school that—

(1) Is in the school district of an LEA that is eligible for assistance pursuant to title I of the ESEA;

(2) Has been determined by the Secretary to be a school in which more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I of the ESEA; and

(3) Is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary considers all elementary and secondary schools 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 serving low-income students.

Secondary school: A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and—

(1) Provides a high-quality teacher preparation program at the baccalaureate or master's degree level that—

(i)(A) Is accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or

(B) Is approved by a State and includes a minimum of 10 weeks of full-time pre-service clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework; and

(ii) Provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(2) Provides a two-year program that—

(i) Is acceptable for full credit in a baccalaureate teacher preparation program of study offered by an institution described in paragraph (1) of this definition, as demonstrated by the institutions; or

(ii) Is acceptable for full credit in a baccalaureate degree program in a high-need field at an institution described in paragraph (3) of this definition, as demonstrated by the institutions;

(3) Offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field as defined in this part and has entered into an agreement with an institution described in paragraphs (1) or (4) of this definition to provide courses necessary for its students to begin a career in teaching; or

(4) Provides a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, is a program of study 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: A person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Teacher preparation program: A State-approved course of study, the completion of which signifies that an enrollee has met all the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. A teacher preparation program may be a regular program or an alternative route to certification, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 75 FR 66968, Oct. 29, 2010]

§ 686.3 Duration of student eligibility.

(a) An undergraduate or post-baccalaureate student enrolled in a TEACH Grant-eligible program may receive the equivalent of up to four Scheduled Awards during the period required for the completion of the first undergraduate baccalaureate program of study and first post-baccalaureate program of study combined.

(b) A graduate student is eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master's degree program of study.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.4 Institutional participation.

(a) A TEACH Grant-eligible institution that offers one or more TEACH Grant-eligible programs may elect to participate in the TEACH Grant program.

(b) If an institution begins participation in the TEACH Grant program during an award year, a student enrolled at and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(c) If an institution ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program during an award year, a student who was attending the institution and who submitted a SAR with an official EFC to the institution, or for whom the institution obtained an ISIR with an official EFC, before the date the institution became ineligible will receive a TEACH Grant for that award year for—

(1) The payment periods that the student completed before the institution ceased participation or became ineligible to participate; and

(2) The payment period in which the institution ceased participation or became ineligible to participate.

(d) An institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program must, within 45 days after the effective date of the loss of eligibility, provide to the Secretary—

(1) The name and other student identifiers as required by the Secretary of each eligible student under § 686.11 who, during the award year, submitted a SAR with an official EFC to the institution or for whom it obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate;

(2) The amount of funds paid to each student for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution ceased to participate in the TEACH Grant program or became ineligible to participate; and

(4) An accounting of the TEACH Grant program expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.5 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an arrangement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

(1) Applies toward a student's degree or post-baccalaureate program of study or is remedial work taken by the student to help in his or her TEACH Grant-eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student's regular coursework for the payment period for which enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular coursework is considered a less-than-half-time student.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 686.5	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)*	.....	.....	.....	Less-than-half-time.

*Any combination of regular and correspondence work that is greater than zero, but less than six hours.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.6 Payment from more than one institution.

A student may not receive grant payments under this part concurrently from more than one institution.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart B—Application Procedures

§ 686.10 Application.

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

(1) Complete and submit an approved signed application, as designated by the Secretary. A copy of this application is not acceptable;

(2) Complete and sign an agreement to serve and promise to repay; and

(3) Provide any additional information and assurances requested by the Secretary.

(b) The student must submit an application to the Secretary by—

(1) Sending the completed application to the Secretary; or

(2) Providing the application, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically.

(c) The student must provide the address of his or her residence.

(d) For each award year, the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting to the Department the application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.11 Eligibility to receive a grant.

(a) *Undergraduate, post-baccalaureate, and graduate students.* (1) Except as provided in paragraph (b) of this section, a student who meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(i) Has submitted a completed application;

(ii) Has signed an agreement to serve as required under § 686.12;

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program;

(iv) Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating; and

(v) Has—

(A) If the student is in the first year of a program of undergraduate education as determined by the institution—

(*1*) A final cumulative secondary school grade point average (GPA) upon graduation of at least 3.25 on a 4.0 scale, or the numeric equivalent; or

(*2*) A cumulative GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, based on courses taken at the institution through the most-recently completed payment period;

(B) If the student is beyond the first year of a program of undergraduate education as determined by the institution, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period;

(C) If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent;

(D) If the student is a graduate student beyond the first payment period, a cumulative graduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period; or

(E) A score above the 75th percentile of scores achieved by all students taking the test during the period the student took the test on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, except that such test may not include a placement test.

(2)(i) An institution must document the student's secondary school GPA under § 686.11(a)(1)(v)(A) using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency; or

(C) A public or private secondary school.

(iii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation of a home-schooled student's secondary school GPA.

(iv) If an institution has reason to believe the documentation provided by a student under paragraph (a)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's grades by using documentation provided directly to the institution by the cognizant authority.

(b) *Current or former teachers or retirees.* A student who has submitted a completed application and meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(1) Has signed an agreement to serve as required under § 686.12;

(2) Is a current teacher or retiree who is applying for a grant to obtain a master's degree or is or was a teacher who is pursuing certification through a high-quality alternative certification route; and

(3) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the period required for the completion of a master's degree.

(c) *Transfer students.* If a student transfers from one institution to the current institution and does not qualify under § 686.11(a)(1)(v)(E), the current institution must determine that student's eligibility for a TEACH Grant for the first payment period using either the method described in paragraph (c)(1) of this section or the method described in paragraph (c)(2) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(1) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted upon transfer—

(i) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts; and

(ii) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(2) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, the current institution must use the grades assigned to the coursework accepted by the current institution as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.12 Agreement to serve.

(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 provided by the Secretary and receives counseling in accordance with § 686.32.

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

(1) Serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program or otherwise ceasing to be enrolled in the program for which the recipient received the TEACH Grant—

(i) In a low-income school;

(ii) As a highly-qualified teacher; and

(iii) In a high-need field in the majority of classes taught during each elementary and secondary academic year.

(2) Submitting, 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; and

(3) Complying with the terms, conditions, and other requirements consistent with §§ 686.40–686.43 that the Secretary determines to be necessary.

(c) *Completion of more than one service obligation.* (1) A grant recipient must complete a service obligation for each program of study for which he or she received TEACH Grants. Each service obligation begins following the completion or other cessation of enrollment by the student in the TEACH Grant-eligible program for which the student received TEACH Grant funds. 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) A grant recipient may request a suspension, in accordance with § 686.41, of the eight-year time period in paragraph (b)(1) of this section.

(d) *Majoring and serving in a high-need field.* A grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List cannot satisfy his or her service obligation to teach in that high-need field unless the high-need field in which he or she has prepared to teach is listed in the Nationwide List for the State in which the grant recipient begins teaching at the time the recipient begins teaching in that field.

(e) *Repayment for failure to complete service obligation.* If a grant recipient

fails or refuses to carry out the required service obligation described in paragraph (b) of this section, the TEACH Grants received by the recipient must be repaid and will be treated as a Federal Direct Unsubsidized Loan, with interest accruing from the date of each TEACH Grant disbursement, in accordance with applicable sections of subpart B of 34 CFR part 685.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009]

Subpart C—Determination of Awards

§ 686.20 Submission process and deadline for a SAR or ISIR.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a TEACH Grant to a student who is eligible under § 686.11 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a SAR with an official EFC to the institution; or

(ii) The institution obtains an ISIR with an official EFC for the student.

(2) In determining a student's eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f).

(b) *SAR or ISIR deadline.* Except as provided in 34 CFR 668.164(g), for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the SAR with an official EFC to his or her institution or the institution must obtain an ISIR with an official EFC by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.21 Calculation of a grant.

(a)(1)(i) The Scheduled Award for a TEACH Grant for an eligible student is $4,000.

(ii) Each Scheduled Award remains available to an eligible student until the $4,000 is disbursed.

(2)(i) The aggregate amount that a student may receive in TEACH Grants for undergraduate and post-baccalaureate study may not exceed $16,000.

(ii) The aggregate amount that a student may receive in TEACH Grants for a master's degree may not exceed $8,000.

(b) The annual award for—

(1) A full-time student is $4,000;

(2) A three-quarter-time student is $3,000;

(3) A half-time student is $2,000; and

(4) A less-than-half-time student is $1,000.

(c) Except as provided in paragraph (d) of this section, the amount of a student's grant under this part, in combination with the other student financial assistance available to the student, including the amount of a Federal Pell Grant for which the student is eligible, may not exceed the student's cost of attendance at the TEACH Grant-eligible institution. Other student financial assistance is estimated financial assistance, as defined in 34 CFR 673.5(c).

(d) A TEACH Grant may replace a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance, as defined in 34 CFR 673.5(c).

(e) In determining a student's payment for a payment period, an institution must include—

(1) In accordance with 34 CFR 668.20, any noncredit or reduced credit courses that an institution determines are necessary—

(i) To help a student be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate; or

(ii) In the case of English language instruction, to enable the student to utilize already existing knowledge, training, or skills; and

(2) In accordance with 34 CFR 668.5, a student's participation in a program of study abroad if it is approved for credit

by the home institution at which the student is enrolled.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.22 Calculation of a grant for a payment period.

(a) *Eligibility for payment formula*—(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraph (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C)(*1*) For an undergraduate student, requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (*e.g.*, monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C)(*1*) For an undergraduate student, requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (2) of this section.

(4) *Programs not using terms or using clock hours.* A student's payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of meeting the requirements in paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Dividing the amount described in paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

(i) In a program using semesters or trimesters—

The number of weeks of instructional time offered in *the program in the fall and spring semesters or trimesters*

The number of weeks in the program's academic year

(ii) In a program using quarters—

The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters

The number of weeks in the program's academic year

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraph (a)(1) or (2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(e) *Programs using credit hours without terms or clock hours.* The payment for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by multiplying the Scheduled Award by the lesser of—

(1)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(2)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(f) *Maximum disbursement.* A single disbursement may not exceed 50 percent of an award determined under paragraph (d) of this section. If a payment for a payment period calculated under paragraph (d) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Minimum payment.* No payment for a payment period as determined under this section or § 686.25 may be less than $25.

(h) *Definition of academic year.* For purposes of this section and § 686.25, an institution must define an academic year—

(1) For each of its TEACH Grant-eligible undergraduate programs of study, including post-baccalaureate programs of study, in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3; and

(2) For each of its TEACH Grant-eligible master's degree programs of study in terms of the number of weeks of instructional time in accordance with the requirements of 34 CFR 668.3 and the minimum number of credit or clock hours a full-time student would be expected to complete in the weeks of instructional time of the program's academic year.

(i) *Payment period completing a Scheduled Award.* In a payment period, if a student is completing a Scheduled Award, the student's payment for the payment period—

(1) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(2) Is the remaining amount of the Scheduled Award being completed plus an amount from the next Scheduled Award, if available, up to the payment for the payment period.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 20221, May 1, 2009]

§ 686.23 Calculation of a grant for a payment period that occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b) The institution must determine for each TEACH Grant recipient the award year in which the payment period will be placed subject to the restriction set forth in paragraph (c) of this section;

(c) The institution must place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If the institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(e) If the institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.24 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a TEACH Grant at one institution subsequently enrolls at a second institution, the student may receive a grant at the second institution only if—

(1) The student submits a SAR with an official EFC to the second institution; or

(2) The second institution obtains an ISIR with an official EFC.

(b) The second institution must calculate the student's award in accordance with § 686.22 or 686.25.

(c) The second institution may pay a TEACH Grant only for that period in which a student is enrolled in a TEACH Grant-eligible program at that institution.

(d) The student's TEACH Grant for each payment period is calculated according to the procedures in § 686.22 or 686.25 unless the remaining balance of the Scheduled Award at the second institution is the balance of the student's last Scheduled Award and is less than the amount the student would normally receive for that payment period.

(e) A transfer student must repay any amount received in an award year that exceeds the amount which he or she was eligible to receive.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.25 Correspondence study.

(a) An institution calculates a TEACH Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Using the half-time annual award; and

(2) Multiplying the half-time annual award by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or
(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least six credit hours that commence and are completed in that term, the half-time annual award is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than six credit hours that commence and are completed in that term the less-than-half-time annual award is used to calculate the payment for the payment period;

(3) A payment for a payment period is calculated using the formula in § 686.22(d) except that paragraphs (c)(1) and (2) of this section are used in lieu of § 686.22(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 686.22(d) if the residential training is offered using terms and credit hours or under § 686.22(e) if the residential training is offered using credit hours without terms or clock hours.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 20221, May 1, 2009]

Subpart D—Administration of Grant Payments

§ 686.30 Scope.

This subpart deals with TEACH Grant program administration by a TEACH Grant-eligible institution.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.31 Determination of eligibility for payment and cancellation of a TEACH Grant.

(a) For each payment period, an institution may pay a grant under this part to an eligible student only after it determines that the student—

(1) Is eligible under § 686.11;

(2) Has completed the relevant initial or subsequent counseling as required in § 686.32;

(3) Has signed an agreement to serve as described in § 686.12;

(4) Is enrolled in a TEACH Grant-eligible program; and

(5) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period, as defined in 34 CFR 668.4, for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that

a student is not maintaining satisfactory progress, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student enrolled in a TEACH Grant-eligible program is not maintaining the required GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination after the end of the payment period, the institution may not pay the student a TEACH Grant for that payment period or make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) An institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) The student's final high school GPA is not yet available; or

(ii) The student's cumulative GPA through the prior payment period under § 686.11 is not yet available; and

(2) The institution assumes liability for any overpayment if the student fails to meet the required GPA to qualify for the disbursement.

(e)(1) In accordance with 34 CFR 668.165, before disbursing a TEACH Grant for any award year, an institution must—

(i) Notify the student of the amount of TEACH Grant funds that the student is eligible to receive, how and when those funds will be disbursed, and the student's right to cancel all or a portion of the TEACH Grant; and

(ii) Return the TEACH Grant proceeds, cancel the TEACH Grant, or both, if the institution receives a TEACH Grant cancellation request from the student by the later of the first day of a payment period or 14 days after the date it notifies the student of his or her right to cancel all or a portion of a TEACH Grant.

(2)(i) If a student requests cancellation of a TEACH Grant after the period of time in paragraph (e)(1)(ii) of this section, but within 120 days of the TEACH Grant disbursement date, the institution may return the TEACH Grant proceeds, cancel the TEACH Grant, or do both.

(ii) If the institution does not return the TEACH Grant proceeds, or cancel the TEACH Grant, the institution must notify the student that he or she may contact the Secretary to request that the TEACH Grant be converted to a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.32 Counseling requirements.

(a) *Initial counseling.* (1) An institution must ensure that initial counseling is conducted with each TEACH Grant recipient prior to making the first disbursement of the grant.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) The initial counseling must—

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

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

(iii) Inform the grant recipient that, in order 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 listed in the Nationwide List at the time and for the State in which 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 and the conditions under which a suspension may be granted in accordance with § 686.41;

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

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

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

(B) The TEACH 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 Federal Direct Unsubsidized Loan;

(viii) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant;

(ix) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office;

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

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

(b) *Subsequent counseling.* (1) If a student receives more than one TEACH Grant, the institution must ensure that the student receives additional counseling prior to the first disbursement of each subsequent TEACH Grant award.

(2) Subsequent counseling may be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) Subsequent counseling must—

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

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

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

(B) The TEACH 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 § 686.34, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(iv) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant; and

(v) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office.

(c) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each grant recipient before he or she ceases to attend the institution at a time determined by the institution.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the grant recipient's questions. As an alternative, in the case of a grant recipient enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the grant recipient may be provided with written counseling materials within 30 days after he or she completes the TEACH Grant-eligible program.

(3) Within 30 days of learning that a grant recipient has withdrawn from the institution without the institution's

knowledge, or from a TEACH Grant-eligible program, or failed to complete exit counseling as required, exit counseling must be provided either in-person, through interactive electronic means, or by mailing written counseling materials to the grant recipient's last known address.

(4) The exit counseling must—

(i) Inform the grant recipient of the four-year service obligation that must be completed within the first eight calendar years after completing a TEACH Grant-eligible program in accordance with § 686.12;

(ii) 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;

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

(iv) Inform the grant recipient that, in order 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 listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(v) Explain that the grant recipient will be required to submit to the Secretary each year written documentation of his or her status as a highly-qualified teacher in a high-need field at a low-income school or of his or her intent to complete the four-year service obligation until the date that the service obligation has been met or the date that the grant becomes a Federal Direct Unsubsidized Loan, whichever occurs first;

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

(vii) Emphasize that once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan it cannot be reconverted to a grant;

(viii) Inform the grant recipient of the average anticipated monthly repayment amount based on a range of student loan indebtedness if the TEACH Grants convert to a Federal Direct Unsubsidized Loan;

(ix) Review for the grant recipient available repayment options if the TEACH Grant converts to a Federal Direct Unsubsidized Loan, including the standard repayment, extended repayment, graduated repayment, income-contingent and income-based repayment plans, and loan consolidation;

(x) Suggest debt-management strategies to the grant recipient that would facilitate repayment if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

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

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

(xiii) Review for the grant recipient the conditions under which he or she may defer or forbear repayment, obtain a full or partial discharge, or receive teacher loan forgiveness if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xiv) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office; and

(xv) Inform the grant recipient of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(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 this section for each TEACH Grant recipient.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.33 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment

periods for which the student was eligible under § 686.11 within the award year as long as the student has signed the agreement to serve prior to disbursement of the TEACH Grant. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.34 Liability for and recovery of TEACH Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a student is liable for any TEACH Grant overpayment made to him or her.

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or in 34 CFR part 668. The institution must restore an amount equal to the overpayment to its TEACH Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a TEACH Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a TEACH Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make the requested repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the TEACH Grant overpayment.

(2) If a student objects to the institution's TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a TEACH Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the TEACH Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection in accordance with procedures required by the Secretary. After referring the TEACH Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.35 Recalculation of TEACH Grant award amounts.

(a) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another academic term within the same award year, the institution must recalculate the TEACH Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. In the case of an undergraduate or post-baccalaureate program of study, if such a policy is established, it must be the same policy that the institution established under 34 CFR 690.80(b) for the Federal Pell Grant Program and it must apply to all students in the TEACH Grant-eligible program.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must recalculate the student's enrollment status to reflect only those classes for which he or she actually began attendance.

(b) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may, but is not required to, establish a policy under which the student's TEACH Grant

award for the payment period is recalculated. If such a policy is established, it must apply to all students in the TEACH Grant-eligible program.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.36 Fiscal control and fund accounting procedures.

(a) An institution must follow the provisions for maintaining general fiscal records in this section and in 34 CFR 668.24(b).

(b) An institution must maintain funds received under this section in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.37 Institutional reporting requirements.

(a) An institution must provide to the Secretary information about each TEACH Grant recipient that includes but is not limited to—

(1) The student's eligibility for a TEACH Grant, as determined in accordance with §§ 686.11 and 686.31;

(2) The student's TEACH Grant amounts; and

(3) The anticipated and actual disbursement date or dates and disbursement amounts of the TEACH Grant funds.

(b) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 75 FR 66968, Oct. 29, 2010]

§ 686.38 Maintenance and retention of records.

(a) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart E—Service and Repayment Obligations

§ 686.40 Documenting the service obligation.

(a) Except as provided in §§ 686.41 and 686.42, within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received, the grant recipient must confirm to the Secretary in writing that—

(1) He or she is employed as a full-time teacher in accordance with the terms and conditions of the agreement to serve described in § 686.12; or

(2) He or she is not yet employed as a full-time teacher but intends to meet the terms and conditions of the agreement to serve described in § 686.12.

(b) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve, or agreements to serve 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 in which the grant recipient is teaching. The documentation must show that the grant recipient is teaching in a low-income school. If the school 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 fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.

(c)(1) In addition to the documentation requirements in paragraph (b) of this section, the documentation must show that the grant recipient—

(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 a State in another high-need field designated by that State and listed in the Nationwide List, except that teaching service does not satisfy the requirements of the agreement to serve if that teaching service is in a geographic region of a State or in a specific grade level not associated with a high-need field of a State designated in the Nationwide List as having a shortage of elementary or secondary school teachers.

(2) If a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in a high-need field of that State and to continue to fulfill the service obligation.

(d) Documentation must also provide evidence that the grant recipient is a highly-qualified teacher.

(e) 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)); or

(2) A call or order to active duty status for more than 30 days 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), under a call to active service in connection with a war, military operation, or a national emergency.

(f) A grant recipient who taught in more than one qualifying school 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 involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 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) A condition that is a qualifying reason for leave under the FMLA; or

(iii) A call or order to active duty status for more than 30 days 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), under a call to active service in connection with a war, military operation, or a national emergency.

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

(i) Does not exceed a combined total of three years under both paragraphs (a)(1)(i) and (ii) of this section; or

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) 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)(iii) of this section, must apply for

a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal 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)(iii) 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.

(Approved by the Office of Management and Budget under control number 1845–0083)

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009]

§ 686.42 Discharge of agreement to serve.

(a) *Death.* (1) If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the grant recipient's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges the obligation to complete the agreement to serve based on other reliable documentation of the grant recipient's death that is acceptable to the Secretary.

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 682.200(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) The eight-year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on a condition that is a qualifying reason for leave under the FMLA in accordance with § 686.41(a)(1)(ii)(D).

(3) Interest continues to accrue on each TEACH Grant disbursement unless and until the TEACH Grant recipient's agreement to serve is discharged.

(4) If the grant recipient satisfies the criteria for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary discharges the grant recipient's service obligation.

(5) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the grant recipient does not meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and the grant recipient is once again subject to the terms of the agreement to serve.

(c) *Military discharge.* (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 and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or

(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

(Approved by the Office of Management and Budget under control number 1845–0083)

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009; 81 FR 76089, Nov. 1, 2016]

§ 686.43 Obligation to repay the grant.

(a) The TEACH Grant amounts disbursed to the recipient will be converted into a Federal 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—

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

(2) Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with § 686.40(a);

(3) Within one year of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has not—

(i) Been determined eligible for a suspension of the eight-year period for completion of the service obligation as provided in § 686.41;

(ii) Re-enrolled in a TEACH Grant-eligible program; or

(iii) Begun creditable teaching service as described in § 686.12(b);

(4) The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the agreement to serve; or

(5) The grant recipient has completed the TEACH Grant-eligible program but has failed to 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.

(b) A TEACH Grant that converts to a loan, and is treated as a Federal Direct Unsubsidized Loan, is not counted against the grant recipient's annual or any aggregate Stafford Loan limits.

(c) A grant recipient whose TEACH Grant has been converted to a Federal 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, including an in-school deferment.

(d) A TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant.

(Authority: 20 U.S.C. 1070g, *et seq.*)

PART 690—FEDERAL PELL GRANT PROGRAM

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

Subpart A—Scope, Purpose and General Definitions

SOURCE: 50 FR 10717, Mar. 15, 1985, unless otherwise noted.

§ 690.1 Scope and purpose.

The Federal Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 59 FR 54730, Nov. 1, 1994]

§ 690.2 Definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Award year
Clock hour
Correspondence course
Credit hour
Secretary
State

(b) The following definitions are contained in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic Competitiveness Grant (ACG) Program
Academic year
Dependent student
Eligible program
Enrolled
Expected family contribution
Federal Family Education Loan (FFEL) Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Full-time student
Half-time student
HEA
Independent student
Institutional student information record (ISIR)
National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
Parent
Payment period
Student aid report (SAR)
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant
Three-quarter-time student
Undergraduate student
Valid institutional student information record (valid ISIR)
Valid student aid report (valid SAR)
William D. Ford Federal Direct Loan Program

(c) Other terms used in this part are:

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full academic year in an award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for being enrolled in that enrollment status for a full academic year in an award year.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application information, transmits an ISIR to each institution designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

(3) The amount of funds available for making Federal Pell Grants.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) A student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) An institution is able to receive an ISIR from the central processor for a student.

Eligible student: An eligible student as described in 34 CFR part 668, subpart C.

Enrollment status: Full-time, three-quarter-time, half-time, or less-than-half-time depending on a student's credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

Institution of higher education (Institution). An institution of higher education, or a proprietary institution of higher education, or a postsecondary vocational institution as defined in 34 CFR part 600.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Payment Schedule: A table showing a full-time student's Scheduled Federal Pell Grant for an academic year. This table, published annually by the Secretary, is based on—

(1) The student's EFC; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

Scheduled Federal Pell Grant: The amount of a Federal Pell Grant which would be paid to a full-time student for a full academic year.

(Authority: 20 U.S.C. 1070a, 1070g)

[50 FR 10717, Mar. 15, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §690.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§§ 690.3–690.5 [Reserved]

§ 690.6 Duration of student eligibility.

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate

course of study. Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution's determination of that student's period of Federal Pell Grant eligibility.

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

(e) If a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards.

(Authority: 20 U.S.C. 1070a)

[52 FR 38207, Oct. 14, 1987, as amended at 59 FR 54730, Nov. 1, 1994; 64 FR 58294, Oct. 28, 1999; 74 FR 55951, Oct. 29, 2009]

§ 690.7 Institutional participation.

(a) An institution may not participate in the Federal Pell Grant Program if the institution—

(1) Offers at least one eligible program for purposes of the ACG Program, as defined in 34 CFR 691.2(d), but does not participate in the ACG Program; or

(2) Offers at least one eligible program for purposes of the National SMART Grant Program, as defined in 34 CFR 691.2(d), but does not participate in the National SMART Grant Program.

(b) If an institution begins participation in the Federal Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Federal Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(c) If an institution becomes ineligible to participate in the Federal Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution, or for whom the institution obtained a valid ISIR, before the date the institution became ineligible is paid a Federal Pell Grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(d)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.187.

(e) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Federal Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Federal Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Federal Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43161, Nov. 28, 1986; 56 FR 56916, Nov. 6, 1991; 59 FR 54730, Nov. 1, 1994; 60 FR 61816, Dec. 1, 1995; 64 FR 58294, Oct. 28, 1999; 65 FR 65651, Nov. 1, 2000; 69 FR 12277, Mar. 16, 2004; 71 FR 38004, July 3, 2006]

§ 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 690.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c) [1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Authority: 20 U.S.C. 1070a)

[52 FR 45735, Dec. 1, 1987, as amended at 59 FR 54731, Nov. 1, 1994; 71 FR 38004, July 3, 2006]

§ 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Federal Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely to pay the institution's cost of administering the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs.

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places

that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)

[50 FR 10717, Mar. 15, 1985, as amended at 52 FR 45736, Dec. 1, 1987; 59 FR 54730, 54732, Nov. 1, 1994; 61 FR 60397, Nov. 27, 1996]

§ 690.11 Federal Pell Grant payments from more than one institution.

A student is not entitled to receive Federal Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 59 FR 54730, Nov. 1, 1994]

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 690.12 Application.

(a) As the first step to receiving a Federal Pell Grant, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated. A copy of this form is not acceptable.

(b) The student shall submit an application to the Secretary by—

(1) Providing the application form, signed by all appropriate family members, to the institution at which the student attends or plans to attend so that the institution can transmit electronically the application information to the Secretary under EDE; or

(2) Sending an approved application form to the Secretary.

(c) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(d) For each award year the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a)

[50 FR 10721, Mar. 15, 1985, as amended at 59 FR 54732, Nov. 1, 1994; 60 FR 21438, May 2, 1995; 60 FR 30789, June 12, 1995; 61 FR 60397, Nov. 27, 1996]

§ 690.13 Notification of expected family contribution.

The Secretary sends a student's application information and EFC as calculated by the central processor to the student on an SAR and allows each institution designated by the student to obtain an ISIR for that student.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a)

[61 FR 60397, Nov. 27, 1996]

§ 690.14 Applicant's request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

(a) An applicant may request that the Secretary recalculate his or her expected family contribution if—

(1) He or she believes a clerical or arithmetic error has occurred; or

(2) The information he or she submitted was inaccurate when the application was signed.

(b) The applicant shall request that the Secretary make the recalculation described in paragraph (a) of this section by—

(1) Having his or her institution transmit that request to the Secretary under EDE; or

(2) Sending to the Secretary an approved form, certified by the student, and one of the student's parents if the student is a dependent student.

(c) If an institution transmits electronically the student's recalculation request to the Secretary, the corrected information must be supported by—

(1) Information contained on an approved form, that is certified by the student, and if the student is a dependent student, one of the student's parents; or

(2) Verification documentation provided by a student under 34 CFR 668.57.

(d) The recalculation request must be received by the Secretary no later than the deadline date established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

[50 FR 10721, Mar. 15, 1985, as amended at 51 FR 8954, Mar. 14, 1986; 59 FR 54732, Nov. 1, 1994; 61 FR 60397, Nov. 27, 1996]

Subparts C–E [Reserved]

Subpart F—Determination of Federal Pell Grant Awards

SOURCE: 50 FR 10722, Mar. 15, 1985, unless otherwise noted.

§ 690.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a Federal Pell Grant to an eligible student who is otherwise qualified to receive that disbursement and electronically transmit Federal Pell Grant disbursement data to the Secretary for that student if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution obtains a valid ISIR for the student.

(2) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to assume that SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) *Valid Student Aid Report or Valid Institutional Student Information Record deadline.* Except as provided in the verification provisions of § 668.60 and the late disbursement provisions of § 668.164(g) of this chapter, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the valid SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C 1070a)

[59 FR 54732, Nov. 1, 1994, as amended at 61 FR 60397, Nov. 27, 1996; 67 FR 67083, Nov. 1, 2002; 69 FR 12277, Mar. 16, 2004; 75 FR 66968, Oct. 29, 2010]

§ 690.62 Calculation of a Federal Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) No payment may be made to a student if the student's annual award is less than $200. However, a student who is eligible for an annual award that is equal to or greater than $200, but less than or equal to $400, shall be awarded a Federal Pell Grant of $400.

(Authority: 20 U.S.C. 1070a(a)(2))

[50 FR 10722, Mar. 15, 1985, as amended at 59 FR 54730, 54732, Nov. 1, 1994]

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's Federal Pell Grant for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs of study offered by correspondence.* A student's Federal Pell Grant payment for a payment period is calculated under § 690.66 if the program is offered by correspondence courses.

(6) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's Federal Pell Grant payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(iii) The institution uses the methodology described in § 690.66 if the program is correspondence study.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters}}{\text{The number of weeks in the program's academic year}}$$

; or

In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(i) [Reserved]

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her enrollment status for the term by—

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number

of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time student; and

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(e) *Programs using credit hours without terms or clock hours.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule; and

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(f) A single disbursement may not exceed 50 percent of any award determined under paragraph (d) of this section. If a payment for a payment period calculated under paragraph (d) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g)(1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and 34 CFR 668.66, the amount of a student's award for an award year may not exceed his or her Scheduled Federal Pell Grant award for that award year.

(2) For purposes of this section and § 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

(h) [Reserved]

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

[59 FR 54733, Nov. 1, 1994, as amended at 69 FR 12277, Mar. 16, 2004; 71 FR 38004, July 3, 2006; 72 FR 62033, Nov. 1, 2007; 74 FR 20221, May 1, 2009; 74 FR 55951, Oct. 29, 2009; 74 FR 61245, Nov. 23, 2009; 77 FR 25901, May 2, 2012]

§ 690.64 Determining the award year for a Federal Pell Grant payment period that occurs in two award years.

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed;

(3) If an institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(4) If an institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

(Authority: 20 U.S.C. 1070a)

[77 FR 25901, May 2, 2012]

§ 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Federal Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student may receive a Federal Pell Grant at the second institution only if—

(1) The student submits a valid SAR to the second institution; or

(2) The second institution obtains a valid ISIR.

(b) The second institution shall calculate the student's award according to § 690.63.

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's Scheduled Federal Pell Grant for that award year.

(d) If a student's Scheduled Federal Pell Grant at the second institution differs from the Scheduled Federal Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Federal Pell Grant at the first institution to determine the percentage of the Scheduled Federal Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Federal Pell Grant at the second institution to which the student is entitled.

(e) The student's Federal Pell Grant for each payment period is calculated according to the procedures in § 690.63 unless the remaining percentage of the Scheduled Federal Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Federal Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year that exceeds his or her Scheduled Federal Pell Grant.

(Authority: 20 U.S.C. 1070a)

[50 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986; 59 FR 54730, 54734, Nov. 1, 1994; 77 FR 25901, May 2, 2012]

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining the student's annual award using the half-time Disbursement Schedule; and

(2) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(b) For purposes of paragraph (a) of this section—

(1) The institution shall make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution shall make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the Disbursement Schedule for a half-time student is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term the Disbursement Schedule for a less-than-half-time student is used to calculate the payment for the payment period;

(3) A payment for a payment period is calculated using the formula in § 690.63(d) except that paragraphs (c) (1) and (2) of this section are used in lieu of § 690.63(d) (1) and (2) respectively; and

(4) The institution shall make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training shall be calculated under § 690.63(d) if the residential training is offered using terms and credit hours or § 690.63(e) if the residential training is offered using credit hours without terms.

[59 FR 54734, Nov. 1, 1994, as amended at 72 FR 62033, Nov. 1, 2007; 74 FR 20221, May 1, 2009]

§ 690.67 [Reserved]

Subpart G—Administration of Grant Payments

SOURCE: 50 FR 10724, Mar. 15, 1985, unless otherwise noted.

§ 690.71 Scope.

This subpart deals with program administration by an institution of higher education.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986; 59 FR 54730, Nov. 1, 1994; 60 FR 61816, Dec. 1, 1995]

§§ 690.72–690.74 [Reserved]

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the student—

(1) Qualifies as an eligible student under 34 CFR Part 668, Subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in § 668.4 for which he or she has been paid a Federal Pell Grant.

(b) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Federal Pell Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Federal Pell Grant for that payment period nor make adjustments in subsequent Federal Pell Grant payments to compensate for the loss of aid for that period.

(d) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution amount at least equal to the maximum authorized award amount for the award year if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Approved by the Office of Management and Budget under control number 1845–0681)

(Authority: 20 U.S.C. 1070a)

[52 FR 45736, Dec. 1, 1987, as amended at 56 FR 56916, Nov. 6, 1991; 59 FR 54730, 54735, Nov. 1, 1994; 60 FR 30789, June 12, 1995; 61 FR 60397, Nov. 27, 1996; 61 FR 60610, Nov. 29, 1996; 65 FR 65676, Nov. 1, 2000; 67 FR 67083, Nov. 1, 2002]

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 56 FR 56916, Nov. 6, 1991]

§§ 690.77–690.78 [Reserved]

§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR Part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice

to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.

(2) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a)

[67 FR 67083, Nov. 1, 2002]

§ 690.80 Recalculation of a Federal Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Federal Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14; or

(ii) A correction based on information required as a result of verification under 34 CFR part 668, subpart E.

(2) Except as described in 34 CFR 668.60(c), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 59 FR 54735, Nov. 1, 1994]

§ 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 668.24(b).

(b) An institution shall maintain funds received under this part in accordance with the requirements in § 668.164.

(Approved by the Office of Management and Budget under control number 1840–0536)

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 54730, Nov. 1, 1994; 59 FR 61722, Dec. 1, 1994; 61 FR 60397, 60493, Nov. 27, 1996]

§ 690.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a, 1232f)

[61 FR 60494, Nov. 27, 1996]

§ 690.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to a Federal Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b)(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student's Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the FEDERAL REGISTER.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of a Federal Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(c) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d)(1) Notwithstanding paragraphs (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award

year and that was conducted after December 31, 1988 and timely submitted to the Secretary under 34 CFR 668.23(c).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Approved by the Office of Management and Budget under control number 1840–0688)

(Authority: 20 U.S.C. 1070a, 1094, 1226a–1)

[60 FR 61816, Dec. 1, 1995; 61 FR 3776, Feb. 1, 1996, as amended at 71 FR 38004, July 3, 2006]

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

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Sec.

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AUTHORITY: 20 U.S.C. 1070a–1, unless otherwise noted.

SOURCE: 71 FR 38004, July 3, 2006, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 691.1 Scope and purpose.

(a) The ACG Program awards grants to help eligible financially needy first- and second-year undergraduate students, who complete rigorous secondary school programs of study, meet the cost of their postsecondary education.

(b) The National SMART Grant Program awards grants to help eligible financially needy third-, fourth-, and, in

the case of a program with at least five full years, fifth-year undergraduate students who are pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering or a critical foreign language meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20221, May 1, 2009]

§ 691.2 Definitions.

(a) The following definitions used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Award year
Clock hour
Correspondence course
Credit hour
Eligible institution
Federal Family Education Loan (FFEL) Programs
Regular student
Secretary
State
Title IV, HEA program

(b) The following definitions used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Enrolled
Expected family contribution
Federal Pell Grant Program
Full-time student
Half-time student
HEA
Payment period
Three-quarter time student
Undergraduate student
William D. Ford Federal Direct Loan (Direct Loan) Program

(c) The following definitions used in this part are in 34 CFR part 77:

Local educational agency (LEA)
State educational agency (SEA)

(d) Other terms used in this part are:

ACG Scheduled Award: The maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year.

Annual award: The maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

Classification of Instructional Programs (CIP): A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics used to identify eligible majors for the National SMART Grant Program. Further information on CIP can be found at *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165*.

Eligible major: A major, as identified by the Secretary under § 691.17(a), in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language as defined in section 103(3) of the HEA; or a qualifying liberal arts curriculum as identified by the Secretary under § 691.17(b).

Eligible program: An eligible program as defined in 34 CFR 668.8 that—

(1) For purposes of the ACG Program—

(i) Is an undergraduate program of at least one academic year, but less than two academic years, in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(ii) Is an undergraduate program of at least two academic years in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(iii) Leads to an associate's degree or a bachelor's degree;

(iv) Is at least a two-academic-year program acceptable for full credit toward a bachelor's degree; or

(v) Is a graduate degree program that includes at least three years of undergraduate education; or

(2) For purposes of the National SMART Grant Program—

(i) Leads to a bachelor's degree in an eligible major or is a graduate degree program in an eligible major that includes at least three years of undergraduate education; and

(ii) In the case of a five-year program, is a program that—

(A) Requires at least five full undergraduate years to complete, as certified by an appropriate institutional

official in accordance with the institution's policies and procedures and documented in the institution's records;

(B) Contains not less than 24 semester hours, 36 quarter credits, or 900 clock hours in each year of the program, including the fifth year; and

(C) Is not a program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b).

(3) For purposes of paragraph (2)(ii)(A) of this definition, the appropriate official of an institution is the chief executive officer, provost, dean, academic department chairman, or other official with responsibility for setting a degree program's coursework.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC.

National SMART Grant Scheduled Award: The maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report (valid SAR): A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(e)(1) As used in this part, the terms ''first-year,'' ''second-year,'' ''third-year,'' ''fourth-year,'' and ''fifth-year'' refer to a student's grade level in the student's eligible program as determined by the institution for all students in the eligible program.

(2) A student's grade level for purposes of the ACG and National SMART Grant programs must be the same grade level as used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 72 FR 61263, Oct. 29, 2007; 72 FR 62034, Nov. 1, 2007; 74 FR 20221, May 1, 2009; 74 FR 61245, Nov. 23, 2009; 75 FR 66968, Oct. 29, 2010]

§§ 691.3–691.5 [Reserved]

§ 691.6 Duration of student eligibility—undergraduate course of study.

(a) While enrolled in an ACG-eligible program, a student is eligible to receive up to one ACG Scheduled Award while enrolled as a first-year student and one ACG Scheduled Award while enrolled as a second-year student.

(b)(1) While enrolled in a National SMART Grant-eligible program, a student is eligible to receive up to one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a National SMART Grant-eligible program with five full years of coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student.

(2)(i) A student's eligibility to receive up to one National SMART Grant Scheduled Award as a fourth-year student, in the case of a National SMART Grant-eligible program with less than five full years of coursework, extends from the beginning of the student's fourth year until he or she completes his or her first undergraduate baccalaureate course of study.

(ii) A student's eligibility to receive up to one National SMART Grant Scheduled Award as a fifth-year student, in the case of a National SMART Grant-eligible program with at least five full years of coursework, extends from the beginning of the student's fifth year until he or she completes his or her first undergraduate baccalaureate course of study.

(c) A student may not receive more than two ACG Scheduled Awards and

three National SMART Grant Scheduled Awards during the student's undergraduate education in all eligible programs.

(Authority: 20 U.S.C. 1070a–1)

[74 FR 20222, May 1, 2009]

§ 691.7 Institutional participation.

(a) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the ACG Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the ACG Program.

(b) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the National SMART Grant Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the National SMART Grant Program.

(c) If an institution begins participation in the ACG or National SMART Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(d) If an institution becomes ineligible to participate in the ACG or National SMART Grant Program during an award year, a student who was eligible for a grant under § 691.15 who was attending the institution and who submitted a valid SAR to the institution, or for whom the institution obtained a valid ISIR, before the date the institution became ineligible is paid a grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(e)(1) If an institution loses its eligibility to participate in the Federal Pell Grant Program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the ACG or National SMART Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.187.

(f) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name of each eligible student under § 691.15 who, during the award year, submitted a valid SAR to the institution or for whom it obtained a valid ISIR before it became ineligible;

(2) The amount of funds paid to each grant recipient for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the ACG or National SMART Grant Program expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a–1)

§ 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student's regular coursework for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces

an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or based on a combination of his or her correspondence work and regular coursework is considered a less-than-half-time student and is ineligible for an ACG or a National SMART Grant.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution of higher education defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 691.8	Number of credit hours regular work	Number of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)*				Less-than-half-time.

*Any combination of regular and correspondence work that is greater than zero, but less than six hours. A less-than-half-time student would be ineligible for an ACG or a National SMART Grant.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 72 FR 62034, Nov. 1, 2007; 74 FR 20222, May 1, 2009]

§§ 691.9–691.10 [Reserved]

§ 691.11 Payments from more than one institution.

A student is not entitled to receive grant payments under this part concurrently from more than one institution. A student may only receive an ACG or a National SMART Grant at the same institution from which the student receives his or her Federal Pell Grant award.

(Authority: 20 U.S.C. 1070a–1)

Subpart B—Application Procedures

§ 691.12 Application.

(a) As the first step to receiving a grant under this part, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated and to determine the student's Federal Pell Grant eligibility. A copy of this form is not acceptable.

(b)(1) The student shall provide any information requested by the Secretary in addition to the information necessary to establish eligibility for a Federal Pell Grant.

(2) The additional information may include, but is not limited to, information about the rigorous secondary school program of study completed by a student applying for an ACG.

(c) The student shall submit an application to the Secretary by—

(1) Providing the application form, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically; or

(2) Sending an approved application form to the Secretary.

(d) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(e) For each award year, the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting this application and additional information and for

making corrections to the information provided.

(Authority: 20 U.S.C. 1070a–1)

§§ 691.13–691.14 [Reserved]

§ 691.15 Eligibility to receive a grant.

(a) *General.* A student who meets the requirements of 34 CFR part 668, Subpart C, is eligible to receive an ACG or a National SMART Grant if the student is receiving a Federal Pell Grant disbursement in the same award year.

(b) *ACG Program.* (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study under §691.16;

(C) Has not been previously enrolled as a regular student in an eligible program of undergraduate education except as part of a secondary school program of study. A transfer student who is a first-year student is not considered to have been previously enrolled; and

(iii) For the second year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, a rigorous secondary school program of study under §691.16;

(C) For the first year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2)(i) An institution must document a student's successful completion of a rigorous secondary school program of study under paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's successful completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b) of this section. This documentation must show that the home-schooled student successfully completed a rigorous secondary school program under §691.16. This documentation may include a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the prior institution's determination that the student successfully completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A), and (b)(1)(iii)(B) of this section based on documentation that the prior institution may provide, or based on documentation of the receipt of an ACG disbursement at the prior institution.

(5)(i) If a student self-certifies on an application under §691.12, or otherwise self-identifies to the institution, that he or she completed a rigorous secondary school program of study under §691.16, an institution must attempt to

collect the documentation described under paragraph (b)(2) of this section.

(ii) Notwithstanding 34 CFR 668.16(f), an institution is not required to determine the ACG eligibility of a student if the student does not self-certify on his or her application, or otherwise self-identify to the institution, the completion of a rigorous secondary school program of study.

(c) *National SMART Grant Program.* A student is eligible to receive a National SMART Grant for the third, fourth, or fifth year of his or her eligible program if the student—

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i) In accordance with the institution's academic requirements, formally declares an eligible major;

(ii) Is at an institution where the academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis and the student demonstrates his or her intent to declare an eligible major in accordance with paragraph (d) of this section; or

(iii) Is at an institution that offers as an eligible major a qualifying liberal arts curriculum identified under § 691.17(b); and

(3) Has a cumulative GPA through the most recently completed payment period of 3.0 or higher on a 4.0 scale, or the numeric equivalent measure, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student's eligible program.

(d) *Intent to declare a major.* (1) For a student whose institution's academic policies do not allow the student to declare an eligible major in time to qualify for a National SMART Grant disbursement, the institution must obtain and keep on file a recent self-certification of intent to declare an eligible major that is signed by the student.

(2) The student described in paragraph (d)(1) of this section must formally declare an eligible major when he or she is able to do so under the institution's academic requirements.

(3) If the student is enrolled in a qualifying liberal arts curriculum as a major, there is no requirement to declare a major.

(e) *Documentation of progression in the major.* The institution must document a student's progress in taking the courses necessary to complete the program in the intended or declared major that establishes eligibility for a National SMART Grant. Documentation of coursework progression in the eligible program may include, but is not limited to:

(1) Written counselor or advisor tracking of coursework progress toward a degree in the intended or declared eligible major.

(2) Written confirmation from an academic department within the institution that the student is progressing in coursework leading to a degree in the intended or declared eligible major. This confirmation must be signed by a departmental representative for the intended eligible major.

(3) Other written documentation of coursework that satisfies the ongoing nature of monitoring student coursework progression in the intended or declared eligible major.

(f) *Transfer students.* (1)(i) Under the ACG Program, if a student transfers to an institution that accepts for enrollment at least the credit or clock hours to be considered a second-year student from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from all coursework accepted by the current institution into the student's eligible program.

(ii) Under the ACG Program, if a student transfers to an institution that accepts for enrollment less than the credit or clock hours to be considered a second-year student from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from—

(A) All coursework accepted from all prior postsecondary institutions by the current institution into the student's eligible program; and

(B) The coursework earned at the current institution through the payment period in which the student completes the credit or clock hours of the student's first year in an eligible program based on the total of the credit or clock hours accepted on transfer and

the credit or clock hours earned at the current institution.

(2) Under the National SMART Grant Program, if a student transfers from one institution to the current institution, the current institution must determine that student's eligibility for a National SMART Grant for the first payment period using either the method described in paragraph (f)(2)(i) of this section or the method described in paragraph (f)(2)(ii) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(i) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted in the eligible program upon transfer—

(A) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's eligible program; and

(B) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(ii) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, an institution must use the grades assigned to the coursework accepted by the current institution into the eligible program as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(g) *Numeric equivalent.* (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing ACG or National SMART Grant eligibility. That institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.0 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale; and

(ii) The institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

(Approved by the Office of Management and Budget under control numbers 1845–0001 and 1845–0039)

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 72 FR 61265, Oct. 29, 2007; 74 FR 20222, May 1, 2009]

§ 691.16 Rigorous secondary school program of study.

(a)(1) For each award year commencing with the 2009–2010 award year, the Secretary establishes a deadline for submission of information about secondary school programs of study that are recognized by a designated official, consistent with State law, to prepare students for college and that the designated official deems rigorous.

(2) The designated official may submit information pursuant to paragraph (a)(1) of this section—

(i) For students graduating during the current award year; and

(ii) For students graduating during one or more specified upcoming award years.

(b) In addition to those programs reported to the Secretary as rigorous by the designated official under paragraph

(a) of this section, the following secondary school programs of study are rigorous:

(1) Advanced or honors secondary school programs established by States and in existence for the 2004–2005 school year or later school years.

(2) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English.

(3) A secondary school program identified by a State—level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado.

(4) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of ''4'' or higher on the examinations for at least two of those courses.

(5) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of ''3'' or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

(6) Rigorous secondary school programs of study established by an SEA or, if legally authorized by the State to establish a separate secondary school program of study, an LEA, where such programs were recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

(Approved by the Office of Management and Budget under control number 1845–0078)

(Authority: 20 U.S.C. 1070a–1)

[74 FR 20223, May 1, 2009]

§ 691.17 Determination of eligible majors.

(a) *Eligible major.* For each award year, the Secretary identifies the eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, critical foreign languages as defined in section 103(3) of the HEA, or a qualifying liberal arts curriculum as an eligible major as determined under paragraph (b) of this section.

(b) *Qualifying liberal arts curriculum as an eligible major.* The Secretary may designate a baccalaureate-degree liberal arts curriculum as an eligible major if—

(1) The curriculum is the only curriculum at the institution of higher education and was offered prior to February 8, 2006;

(2) A student is not allowed to declare a major in a particular subject area; and

(3) The Secretary determines that the curriculum—

(i) Is at least equal to the requirements for an identified National SMART Grant-eligible major at an institution of higher education that offers a baccalaureate degree in that eligible major; or

(ii) Requires the student to undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

(c) *Designation of eligible majors.* For each award year, the Secretary publishes a list of eligible majors identified by CIP code.

(d) *Designation of an additional eligible major.* (1) For each award year, the Secretary establishes a deadline for an institution to request designation of an additional eligible major.

(2) Requests for designation of an additional eligible major must include—

(i) The CIP code and program title of the additional major;

(ii) The reason or reasons the institution believes the additional major should be considered an eligible program under this part; and

(iii) Documentation showing that the institution has actually awarded or

plans to award a bachelor's degree in the requested major.

(3) In addition to the information in paragraph (d)(2) of this section, requests for designation of a liberal arts curriculum as an eligible major must include the information demonstrating that the liberal arts curriculum complies with the requirements described in paragraph (b) of this section.

(4) For each award year, the Secretary will confirm the final list of eligible majors.

(e) *Duration of eligible major.* A major that ceases to be listed as an eligible major for an award year remains an eligible major in subsequent award years for a student who pursues that major and receives a National SMART Grant in the award year in which the major was an eligible major.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 72 FR 61267, Oct. 29, 2007; 74 FR 20223, May 1, 2009]

Subparts C–E [Reserved]

Subpart F—Determination of Awards

§ 691.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse an ACG or a National SMART Grant to a student who is eligible under § 691.15 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution obtains a valid ISIR for the student.

(2) In determining a student's eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in the verification provisions of 34 CFR 668.60 and the late disbursement provisions of 34 CFR 668.164(g) of this chapter, for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the valid SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a–1)

§ 691.62 Calculation of a grant.

(a)(1) For each award year, the Secretary establishes and announces the ACG and National SMART Grant Scheduled Awards depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(2) The Secretary may revise the ACG and National SMART Grant Scheduled Awards in an award year depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(b)(1) The maximum ACG Scheduled Award for an eligible student may be up to—

(i) $750 for the first year of the student's eligible program; and

(ii) $1,300 for the second year of the student's eligible program.

(2) The maximum National SMART Grant Scheduled Award for an eligible student may be up to $4,000 for each of the third, fourth, and fifth years of the student's eligible program.

(c) The ACG first-year annual award for—

(1) A full-time student is the lesser of $750 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of $562.50 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of $375 or 50 percent of a reduced ACG Scheduled Award.

(d) The ACG second-year annual award for—

(1) A full-time student is the lesser of $1,300 or a reduced ACG Scheduled

Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of $975 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of $650 or 50 percent of a reduced ACG Scheduled Award.

(e) The National SMART Grant annual award for—

(1) A full-time student is the lesser of $4,000 or a reduced National SMART Grant Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of $3,000 or 75 percent of a reduced National SMART Grant Scheduled Award; and

(3) A half-time student is the lesser of $2,000 or 50 percent of a reduced National SMART Grant Scheduled Award.

(f) The amount of a student's grant under this part, in combination with the student's EFC and other student financial assistance available to the student, including the student's Federal Pell Grant, may not exceed the student's cost of attendance. Other student financial assistance is estimated financial assistance as defined in 34 CFR 673.5(c).

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 74 FR 20223, May 1, 2009]

§ 691.63 Calculation of a grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's payment for

any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number ofweeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's ACG or National SMART Grant annual award if—

(A) An institution chooses to distribute all of the student's ACG or National SMART Grant annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62;

(3) Multiplying his or her ACG or National SMART Grant annual award determined under paragraph (c)(2) of this section by the following fraction as applicable: or

In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; or

In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's ACG or National SMART Grant annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's ACG or National SMART Grant annual award if—

(A) An institution chooses to distribute all of the student's ACG or National SMART Grant Scheduled Award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The payment for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(3) Multiplying his or her ACG or National SMART Grant annual awarddetermined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(e) *Programs using credit hours without terms or clock hours.* The grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining that the student is attending at least half-time;

(2) Determining the student's ACG or National SMART Grant Scheduled Award; and

(3) Multiplying the ACG or National SMART Grant amount determined under paragraph (e)(2) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(f) *Maximum disbursement.* A single disbursement may not exceed 50 percent of any award determined under paragraph (d)) of this section. If a payment for a payment period calculated under paragraph (d) of this section would require the disbursement of more than 50 percent of a student's ACG or National SMART Grant annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's ACG or National SMART Grant annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Definition of academic year.* For purposes of this section, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

(h) *Payment period and grade level progression.* A student may not progress to the next year during a payment period. The student's payment for the payment period—

(1) Is from the ACG or National SMART Grant Scheduled Award of the year being completed; and

(2) Is calculated based on the student's credit or clock hours for the payment period, and weeks of instructional time in the payment period.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 72 FR 62034, Nov. 1, 2007; 74 FR 20224, May 1, 2009; 74 FR 31182, June 30, 2009]

§ 691.64 Calculation of a grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution shall determine for each ACG or National SMART Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraphs (a)(3) and (a)(6) of this section;

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year;

(4) If the institution places the payment period in the first award year, it shall pay a student with funds from the first award year;

(5) If the institution places the payment period in the second award year, it shall pay a student with funds from the second award year; and

(6) The institution must assign the payment period for both the ACG or National SMART Grant and the Federal Pell Grant to the same award year.

(b) An institution may not make a payment that results in the student receiving more than his or her ACG or

National SMART Grant Scheduled Award for a year of the student's eligible program.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20224, May 1, 2009]

§ 691.65 Transfer student.

(a) If a student who receives a grant under this part at one institution subsequently enrolls at a second institution in the same award year, the student may receive a grant at the second institution only if—

(1)(i) The student submits a valid SAR to the second institution; or

(ii) The second institution obtains a valid ISIR; and

(2) The student is receiving a Federal Pell Grant in the same award year.

(b) The second institution shall calculate the student's award according to § 691.63.

(c) The second institution may pay a grant only for that portion of the year of the student's eligible program in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's ACG or National SMART Grant Scheduled Award for the student's year at the second institution.

(d) If a student transfers between award years and the student's ACG or National SMART Grant Scheduled Award at the second institution differs from the ACG or National SMART Grant Scheduled Award at the first institution for that year of the student's eligible program, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the ACG or National SMART Grant Scheduled Award at the first institution to determine the percentage of the ACG or National SMART Grant Scheduled Award that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the ACG or National SMART Grant Scheduled Award at the second institution to which the student is entitled.

(e) The student's ACG or National SMART Grant payment for each payment period is calculated according to the procedures in § 691.63 unless the remaining percentage of the ACG or National SMART Grant Scheduled Award at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's payment is equal to that remaining percentage.

(f) A transfer student shall repay any amount received that exceeds his or her ACG or National SMART Grant Scheduled Award for a year in accordance with § 691.79.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 74 FR 20224, May 1, 2009]

§ 691.66 Correspondence study.

(a) An institution calculates the ACG or National SMART Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining that the student is attending at least half-time;

(2) Determining the student's half-time annual award determined under § 691.62; and

(3) Multiplying the student's half-time annual award by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}}$$

or

The number of weeks of instructional time in the payment period
The number of weeks of instructional time in the program's academic year

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the student's half-time annual award determined under § 691.62 is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term, the student is not eligible for an ACG and National SMART Grant;

(3) A payment for a payment period is calculated using the formula in § 691.63(d) except that paragraphs (c)(1) and (c)(2) of this section are used in lieu of § 691.63(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 691.63(d) if the residential training is offered using terms and credit hours or § 691.63(e) if the residential training is offered using credit hours without terms.

(Authority: 20 U.S.C. 1070a–1)

[74 FR 20224, May 1, 2009]

Subpart G—Administration of Grant Payments

§ 691.71 Scope.

This subpart deals with program administration by an eligible institution.

(Authority: 20 U.S.C. 1070a–1)

§§ 691.72–691.74 [Reserved]

§ 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a grant under this part to a student only after it determines that the student—

(1) Qualifies as a student who is eligible under § 691.15;

(2) Is enrolled as an undergraduate student in an eligible program;

(3) If enrolled in a self-paced credit-hour program without terms or a self-paced clock-hour program, as described in paragraph (e), is progressing as at least a half-time student after completing at least—

(i) Fifty percent of the credit or clock hours of the payment period for which the student is being paid; or

(ii) For a credit-hour program, 50 percent of the academic coursework of the payment period for which the student is being paid if the institution is unable to determine when the student has completed one-half of the credit hours of the payment period; and

(4) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment

period as defined in 34 CFR 668.4 for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a grant under this part to the student for the entire payment period.

(2) For purposes of the ACG Program, if an institution determines at the beginning of a payment period that a student enrolled in the second year of his or her eligible program is not maintaining the necessary GPA for an ACG under § 691.15(b)(1)(iii)(C), but reverses that determination before the end of the payment period, the institution may pay an ACG to the student for the entire payment period.

(3) For purposes of the National SMART Grant Program, if an institution determines at the beginning of a payment period that a student is not maintaining the necessary GPA for a National SMART Grant under § 691.15(c)(3) or is not pursuing a required major under § 691.15(c)(2), but reverses that determination before the end of the payment period, the institution may pay a National SMART Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for an ACG under § 691.15(b)(1)(iii)(C), a National SMART Grant under § 691.15(c)(3), or, in the case of a National SMART Grant is not pursuing a required major under § 691.15(c)(2), but reverses that determination after the end of the payment period, the institution may neither pay the student an ACG or a National SMART Grant for that payment period nor make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) Subject to the requirement of paragraph (d)(2), an institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) For the first payment period of the student's ACG for the second year, a student's GPA for the first year under § 691.15(b)(1)(iii)(C) is not yet available; or

(ii) For a payment period for a National SMART Grant, a student's cumulative GPA through the prior payment period under § 691.15(c)(3) for the student's enrollment in the eligible program through the prior payment period under § 691.15(c)(3) is not yet available; and

(2) The institution assumes liability for any overpayment as a result of the student failing to meet the required GPA to qualify for the disbursement.

(e) For purposes of this section, a self-paced program is an educational program without terms that allows a student—

(1) To complete courses without a defined schedule for completing the courses; or

(2) At the student's discretion, to begin courses within a program either at any time or on specific dates set by the institution for the beginning of courses without a defined schedule for completing the program.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 72 FR 61267, Oct. 29, 2007; 74 FR 20225, May 1, 2009]

§ 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 691.15 within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20225, May 1, 2009]

§§ 691.77–691.78 [Reserved]

§ 691.79 Liability for and recovery of grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any grant overpayment made to him or her under this part.

(2) The institution is liable for a grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR part 668. The institution must restore an amount equal to the overpayment to its ACG or National SMART Grant account, as applicable.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a grant overpayment under this part if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes an overpayment under this part for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(2) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay an overpayment under this part or make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a–1)

§ 691.80 Redetermination of eligibility for a grant award.

(a) Change in receipt of Federal Pell Grant. If, after the beginning of an award year, a student otherwise eligible for an ACG or a National SMART Grant begins or ceases to receive a Federal Pell Grant in that award year, the institution must redetermine the student's eligibility for an ACG or a National SMART Grant in that award year.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one payment period to another within the same award year, the institution must recalculate the student's award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students and be the same as the policy established for the Federal Pell Grant Program.

(ii)(A) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(B) If a student's projected enrollment status changes to less-than-half-time during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must determine that the student is ineligible for a grant for that payment period.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 74 FR 20225, May 1, 2009]

§ 691.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 668.24(b).

(b) An institution shall maintain funds received under this part in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070a–1)

§ 691.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070a–1, 1232f)

§ 691.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to an ACG or a National SMART Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b)(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student's Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the FEDERAL REGISTER.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of an award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 691.79(a).

(c) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d)(1) Notwithstanding paragraph (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided ACGs or National SMART Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and timely submitted to the Secretary under 34 CFR 668.23(a).

(3) An institution that timely submits the Payment Data for a student

in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a–1, 1094, 1226a–1)

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Subpart A—Leveraging Educational Assistance Partnership Program

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

SOURCE: 52 FR 45433, Nov. 27, 1987, unless otherwise noted.

Subpart A—Leveraging Educational Assistance Partnership Program

GENERAL

§ 692.1 What is the Leveraging Educational Assistance Partnership?

The Leveraging Educational Assistance Partnership (LEAP) Program assists States in providing grants and work-study assistance to eligible students who attend institutions of higher education and have substantial financial need. The work-study assistance is provided through campus-based community service work learning study programs, hereinafter referred to as community service-learning job programs.

(Authority: 20 U.S.C. 1070c–1070c–4)

[52 FR 45433, Nov. 27, 1987, as amended at 65 FR 38729, June 22, 2000]

§ 692.2 Who is eligible to participate in the LEAP Program?

(a) *State participation.* A State that meets the requirements in §§ 692.20 and 692.21 is eligible to receive payments under the LEAP program.

(b) *Student participation.* A student must meet the requirements of § 692.40 to be eligible to receive assistance from a State under the LEAP program.

(Authority: 20 U.S.C. 1070c–1)

[52 FR 45433, Nov. 27, 1987, as amended at 65 FR 38729, June 22, 2000]

§ 692.3 What regulations apply to the LEAP Program?

The following regulations apply to the LEAP Program:

(a) The regulations in this part 692.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (Ineligibility of Certain Individuals to Receive Assistance).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) [Reserved]

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

(8) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(c) The Student Assistance General Provisions in 34 CFR part 668.

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles,

and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070c–1070c–4)

[52 FR 45433, Nov. 27, 1987, as amended at 55 FR 21716, May 25, 1990; 59 FR 4223, Jan. 28, 1994; 65 FR 38729, June 22, 2000; 79 FR 76105, Dec. 19, 2014]

§ 692.4 What definitions apply to the LEAP Program?

The following definitions apply to the regulations in this part:

(a) The definitions of the following terms under 34 CFR part 600:

Postsecondary vocational institution (§ 600.6).
Public or private nonprofit institution of higher education (§ 600.4).
Secretary (§ 600.2).
State (§ 600.2).

(b) The definitions of the following terms under 34 CFR part 668:

Academic year (§ 668.2).
Enrolled (§ 668.2).
HEA (§ 668.2).
Institution (§ 668.1(b)).

(c) The definitions of the following terms also apply to the LEAP Program:

Full-time student means a student carrying a full-time academic workload—other than by correspondence—as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

Nonprofit has the same meaning under this part as the same term defined in 34 CFR 77.1 of EDGAR.

(Authority: 20 U.S.C. 1070c–1070c–4)

[52 FR 45433, Nov. 27, 1987, as amended at 59 FR 4223, Jan. 28, 1994; 65 FR 38729, June 22, 2000]

WHAT IS THE AMOUNT OF ASSISTANCE AND HOW MAY IT BE USED?

§ 692.10 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the LEAP program an amount which bears the same ratio to the Federal LEAP funds appropriated as the number of students in that State who are ''deemed eligible'' to participate in the State's LEAP program bears to the total number of students in all States who are ''deemed eligible'' to participate in the LEAP program, except that no State may receive less than it received in fiscal year 1979 for the programs under this part.

(2) For the programs under this part, if the Federal funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal funds it received in fiscal year 1979, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal funds appropriated as the amount of Federal funds that State received in fiscal year 1979 bears to the amount of Federal funds all States received in fiscal year 1979.

(b) For the purpose of paragraph (a)(1) of this section, the Secretary determines the number of students ''deemed eligible'' to participate in a State's LEAP Program by dividing the amount of that State's LEAP expenditures, including both its Federal allotment and the State funds matching the allotment, by the average grant award per student of all participating States. The Secretary determines the ''average grant award per student'' by dividing the total number of student recipients for all States into the total amount of LEAP expenditures for all States, including both the Federal allotments and the State funds matching those allotments. In making this determination, the Secretary uses the most current available data reported by each State.

(Authority: 20 U.S.C. 1070c, 1070c–2)

[52 FR 45433, Nov. 27, 1987, as amended at 59 FR 4223, Jan. 28, 1994; 65 FR 38730, June 22, 2000; 74 FR 55952, Oct. 29, 2009]

§ 692.11 For what purposes may a State use its payments under the LEAP Program?

A State may use the funds it receives under the LEAP Program only to make grants to students and to pay wages or salaries to students in community service-learning jobs.

(Authority: 20 U.S.C. 1070c)

[52 FR 45433, Nov. 27, 1987, as amended at 65 FR 38730, June 22, 2000]

HOW DOES A STATE APPLY TO PARTICIPATE IN THE LEAP PROGRAM?

§ 692.20 What must a State do to receive an allotment under this program?

(a) For each fiscal year that it wishes to participate, a State shall submit an application that contains information that shows that its Leveraging Educational Assistance Partnership Program meets the requirements of § 692.21.

(b)(1) Except as provided in paragraph (b)(2) of this section, the State must submit its application through the State agency designated to administer its Leveraging Educational Assistance Partnership Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary in writing, the State may submit its application under paragraph (a) of this section through an agency that did not administer its Leveraging Educational Assistance Partnership Program as of July 1, 1985.

(Authority: 20 U.S.C. 1070c–2(a))

[52 FR 45433, Nov. 27, 1987, as amended at 65 FR 38730, June 22, 2000]

§ 692.21 What requirements must be met by a State program?

To receive a payment under the LEAP Program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency;

(b) Provides assistance only to students who meet the eligibility requirements in § 692.40;

(c) Provides that assistance under this program to a full-time student will not be more than the lesser of $12,500 or the student's cost of attendance under section 472 of the HEA for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves;

CROSS REFERENCE: See § 692.41.

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in accordance with paragraph (d) of this section;

(f) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution, a reasonable portion of the State's allocation must be awarded to those students;

(h) Provides that—

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year; and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under the LEAP Program represents an additional amount for grants and work-study jobs for students attending institutions over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under the LEAP Program;

(i) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years;

(j) Provides that, to the extent practicable, the proportion of the funds awarded to independent students in the LEAP Program shall be the same proportion of funds awarded to independent students as is in the State program or programs of which the State's LEAP Program is a part;

(k) Notifies eligible students that the grants are—

(1) Leveraging Educational Assistance Partnership Grants; and

(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and

(l) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under the LEAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–2)

[52 FR 45433, Nov. 27, 1987, as amended at 59 FR 4223, Jan. 28, 1994; 65 FR 38730, June 22, 2000; 74 FR 55952, Oct. 29, 2009]

HOW DOES A STATE ADMINISTER ITS COMMUNITY SERVICE-LEARNING JOB PROGRAM?

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

(a)(1) Each year, a State may use up to 20 percent of its allotment for a community service-learning job program that satisfies the conditions set forth in paragraph (b) of this section.

(2) A student who receives assistance under this section must receive compensation for work and not a grant.

(b)(1) The community service-learning job program must be administered by institutions in the State.

(2) Each student employed under the program must be employed in work in the public interest by an institution itself or by a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the agency or organization.

(c) Each community service-learning job must—

(1) Provide community service as described in paragraph (d) of this section;

(2) Provide participating students community service-learning opportunities related to their educational or vocational programs or goals;

(3) Not result in the displacement of employed workers or impair existing contracts for services;

(4) Be governed by conditions of employment that are considered appropriate and reasonable, based on such factors as type of work performed, geographical region, and proficiency of the employee;

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

(6) Not pay any wage to a student that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938.

(d) For the purpose of paragraph (c)(1) of this section, ''community service'' means direct service, planning, or applied research that is—

(1) Identified by an institution through formal or informal consultation with local nonprofit, governmental, and community-based organizations; and

(2) Designed to improve the quality of life for residents of the community served, particularly low-income residents, in such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(e) For the purpose of paragraph (d)(2) of this section, ''low-income residents'' means—

(1) Residents whose taxable family income for the year before the year in which they are scheduled to receive assistance under the LEAP Program did not exceed 150 percent of the amount equal to the poverty level determined by using criteria of poverty established by the United States Census Bureau; or

(2) Residents who are considered low-income residents by the State.

(Authority: 20 U.S.C. 1070c–2, 1070–4)

[52 FR 45433, Nov. 27, 1987, as amended at 59 FR 4223, Jan. 28, 1994; 65 FR 38730, June 22, 2000]

HOW DOES A STATE SELECT STUDENTS UNDER THE LEAP PROGRAM?

§ 692.40 What are the requirements for student eligibility?

To be eligible for assistance, a student must—

(a) Meet the relevant eligibility requirements contained in 34 CFR 668.32; and

(b) Have substantial financial need as determined annually in accordance

with the State's criteria approved by the Secretary.

(Authority: 20 U.S.C. 1070c–2, 1091)

[52 FR 45433, Nov. 27, 1987, as amended at 65 FR 38730, June 22, 2000]

§ 692.41 What standards may a State use to determine substantial financial need?

(a) A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use—

(1) A system for determining a student's financial need under part F of title IV of the HEA;

(2) The State's own needs analysis system if approved by the Secretary; or

(3) A combination of these systems, if approved by the Secretary.

(b) The Secretary generally approves a need-analysis system under paragraph (a) (2) or (3) of this section only if the need-analysis system applies the term ''independent student'' as defined under section 480(d) of the HEA. However, for good cause shown, the Secretary may approve, on a case-by-case basis, a State's need analysis system that uses a definition for ''independent student'' that varies from that term as defined in section 480(d) of the HEA.

(Authority: 20 U.S.C. 1070c–2)

[52 FR 45433, Nov. 27, 1987, as amended at 59 FR 4223, Jan. 28, 1994]

Subpart B—Special Leveraging Educational Assistance Partnership Program

SOURCE: 65 FR 65608, Nov. 1, 2000, unless otherwise noted.

GENERAL

§ 692.50 What is the Special Leveraging Educational Assistance Partnership Program?

The Special Leveraging Educational Assistance Partnership (SLEAP) Program assists States in providing grants, scholarships, and community service work-study assistance to eligible students who attend institutions of higher education and demonstrate financial need.

(Authority: 20 U.S.C. 1070c–3a)

[66 FR 34039, June 26, 2001]

§ 692.51 What other regulations apply to the SLEAP Program?

The regulations listed in § 692.3 also apply to the SLEAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.52 What definitions apply to the SLEAP Program?

The definitions listed in § 692.4 apply to the SLEAP Program.

(Authority: 20 U.S.C. 1070c–3a)

[66 FR 34039, June 26, 2001]

§ 692.53 What requirements must a State satisfy to receive SLEAP Program funds?

To receive SLEAP Program funds for any fiscal year, a State must—

(a) Participate in the LEAP Program;

(b) Meet the requirements in § 692.60; and

(c) Have a program that satisfies the requirements in § 692.21(a), (b), (d), (e), (f), (g), (j), and (k).

(Authority: 20 U.S.C. 1070c–3a)

[65 FR 65608, Nov. 1, 2000, as amended at 66 FR 34039, June 26, 2001]

§ 692.54 What eligibility requirements must a student satisfy to participate in the SLEAP Program?

To receive assistance under the SLEAP Program, a student must meet the eligibility requirements contained in § 692.40.

(Authority: 20 U.S.C. 1070c–3a)

[66 FR 34039, June 26, 2001]

HOW DOES A STATE APPLY TO PARTICIPATE IN THE SLEAP PROGRAM?

§ 692.60 What must a State do to receive an allotment under the SLEAP Program?

To receive an allotment under the SLEAP Program, a State must—

(a) Submit an application in accordance with the provisions in § 692.20;

(b) Identify the activities in § 692.71 for which it plans to use the SLEAP Federal and non-Federal funds;

(c) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported as part of its LEAP Program;

(d) Provide an assurance that for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.71 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(e) Ensure that the Federal share will not exceed one-third of the total funds expended under the SLEAP Program.

(Authority: 20 U.S.C. 1070c–3a)

[65 FR 65608, Nov. 1, 2000, as amended at 66 FR 34039, June 26, 2001]

WHAT IS THE AMOUNT OF ASSISTANCE AND HOW MAY IT BE USED?

§ 692.70 How does the Secretary allot funds to the States?

For fiscal year 2010–2011, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10 prior to calculating allotments for States applying for GAP funds under subpart C of this part.

(Authority: 20 U.S.C. 1070c–3a)

[74 FR 55952, Oct. 29, 2009]

§ 692.71 What activities may be funded under the SLEAP Program?

A State may use the funds it receives under the SLEAP Program for one or more of the following activities:

(a) Supplement LEAP grant awards to eligible students who demonstrate financial need by—

(1) Increasing the LEAP grant award amounts for students; or

(2) Increasing the number of students receiving LEAP grant awards.

(b) Supplement LEAP community service work-study awards to eligible students who demonstrate financial need by—

(1) Increasing the LEAP community service work-study award amounts for students; or

(2) Increasing the number of students receiving LEAP community service work-study awards.

(c) Award scholarships to eligible students who demonstrate financial need and who—

(1) Demonstrate merit or academic achievement; or

(2) Wish to enter a program of study leading to a career in—

(i) Information technology;

(ii) Mathematics, computer science, or engineering;

(iii) Teaching; or

(iv) Other fields determined by the State to be critical to the State's workforce needs.

(Authority: 20 U.S.C. 1070c–3a)

[66 FR 34039, June 26, 2001]

§ 692.72 May a State use the funds it receives under the SLEAP Program to pay administrative costs?

A State may not use any of the funds it receives under the SLEAP Program to pay any administrative costs.

(Authority: 20 U.S.C. 1070c–3a)

[66 FR 34040, June 26, 2001]

HOW DOES A STATE ADMINISTER ITS COMMUNITY SERVICE WORK-STUDY PROGRAM?

§ 692.80 How does a State administer its community service work-study program?

When administering its community service work-study program, a State must follow the provisions in § 692.30, other than the provisions of paragraph (a)(1) of that section.

(Authority: 20 U.S.C. 1070c–3a)

Subpart C—Grants for Access and Persistence Program

SOURCE: 74 FR 55952, Oct. 29, 2009, unless otherwise noted.

GENERAL

§ 692.90 What is the Grants for Access and Persistence Program?

The Grants for Access and Persistence (GAP) Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.91 What other regulations apply to the GAP Program?

The regulations listed in § 692.3 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.92 What definitions apply to the GAP Program?

The definitions listed in § 692.4 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.93 Who is eligible to participate in the GAP Program?

(a) *States.* States that meet the requirements in §§ 692.94 and 692.100 are eligible to receive payments under the GAP Program.

(b) *Degree-granting institutions of higher education.* Degree-granting institutions of higher education that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(c) *Early information and intervention, mentoring, or outreach programs.* Early information and intervention, mentoring, or outreach programs that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(d) *Philanthropic organizations or private corporations.* Philanthropic organizations or private corporations that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(e) *Students.* Students who meet the requirements of § 692.120 are eligible to receive assistance or services from a partnership under the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

To receive GAP Program funds for any fiscal year—

(a) A State must—

(1) Participate in the LEAP Program;

(2) Establish a State partnership with—

(i) At least—

(A) One public degree-granting institution of higher education that is located in the State; and

(B) One private degree-granting institution of higher education, if at least one exists in the State that may be eligible to participate in the State's LEAP Program under subpart A of this part;

(ii) New or existing early information and intervention, mentoring, or outreach programs located in the State; and

(iii) At least one philanthropic organization located in, or that provides funding in, the State, or private corporation located in, or that does business in, the State;

(3) Meet the requirements in § 692.100; and

(4) Have a program under this subpart that satisfies the requirements in § 692.21(a), (e), (f), (g), and (j).

(b) A State may provide an early information and intervention, mentoring, or outreach program under paragraph (a)(2)(ii) of this section.

(Authority: 20 U.S.C. 1070c–3a)

HOW DOES A STATE APPLY TO PARTICIPATE IN GAP?

§ 692.100 What requirements must a State meet to receive an allotment under this program?

For a State to receive an allotment under the GAP Program, the State agency that administers the State's LEAP Program under subpart A of this part must—

(a) Submit an application on behalf of a partnership in accordance with the

provisions in § 692.20 at such time, in such manner, and containing such information as the Secretary may require including—

(1) A description of—

(i) The State's plan for using the Federal funds allotted under this subpart and the non-Federal matching funds; and

(ii) The methods by which matching funds will be paid;

(2) An assurance that the State will provide matching funds in accordance with § 692.113;

(3) An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA;

(4) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make these programs widely available;

(5) A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this subpart;

(6) A description of the steps the State will take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP persist to degree completion;

(7) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution under section 479(c) of the HEA, to identify eligible students and award LEAP Grants under GAP to such students;

(8) An assurance that the State will provide notification to eligible students that grants under this subpart are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

(b) Serve as the primary administrative unit for the partnership;

(c) Provide or coordinate non-Federal share funds, and coordinate activities among partners;

(d) Encourage each institution of higher education in the State that participates in the State's LEAP Program under subpart A of this part to participate in the partnership;

(e) Make determinations and early notifications of assistance;

(f) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported for the programs under this part;

(g) Provide an assurance that, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(h) Provide for reports to the Secretary that are necessary to carry out the Secretary's functions under the GAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.101 What requirements must be met by a State partnership?

(a) *State.* A State that is receiving an allotment under this subpart must meet the requirements under §§ 692.94 and 692.100.

(b) *Degree-granting institution of higher education.* A degree-granting institution of higher education that is in a partnership under this subpart—

(1) Must participate in the State's LEAP Program under subpart A of this part;

(2) Must recruit and admit participating eligible students and provide additional institutional grant aid to participating students as agreed to with the State agency;

(3) Must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;

(4) Must assist the State in the identification of eligible students and the dissemination of early notifications of

assistance as agreed to with the State agency; and

(5) May provide funding or services for early information and intervention, mentoring, or outreach programs.

(c) *Early information and intervention, mentoring, or outreach program.* An early information and intervention, mentoring, or outreach program that is in a partnership under this subpart shall provide direct services, support, and information to participating students.

(d) *Philanthropic organization or private corporation.* A philanthropic organization or private corporation in a partnership under this subpart shall provide non-Federal funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

WHAT IS THE AMOUNT OF ASSISTANCE AND HOW MAY IT BE USED?

§ 692.110 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the GAP Program an amount of the funds available for the GAP Program based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

(2) If a State meets the requirements of § 692.113(b) for a fiscal year, the number of students under § 692.10(a) for the State is increased to 125 percent in determining the ratio in paragraph (a) of this section for that fiscal year.

(3) Notwithstanding paragraph (a)(1) and (2) of this section—

(i) If the Federal GAP funds available from the appropriation for a fiscal year are sufficient to allot to each State that participated in the prior year the same amount of Federal GAP funds allotted in the prior fiscal year, but are not sufficient both to allot the same amount of Federal GAP funds allotted in the prior fiscal year to these States and also to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a), the Secretary allots—

(A) To each State that participated in the prior year, the amount the State received in the prior year; and

(B) To each State that did not participate in the prior year, an amount of Federal GAP funds available to States based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a); and

(ii) If the Federal GAP funds available from the appropriation for a fiscal year are not sufficient to allot to each State that participated in the prior year at least the amount of Federal GAP funds allotted in the prior fiscal year, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

(4) For fiscal year 2011, the prior fiscal year allotment to a State for purposes of paragraph (a)(3) of this section shall include any fiscal year 2010 allotment made to that State under subpart B of this part.

(b) The Secretary allots funds available for reallotment in a fiscal year in accordance with the provisions of paragraph (a) of this section used to calculate initial allotments for the fiscal year.

(c) Any funds made available for the program under this subpart but not expended may be allotted or reallotted for the program under subpart A of this part.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.111 For what purposes may a State use its payment under the GAP Program?

(a) *Establishment of a partnership.* Each State receiving an allotment under this subpart shall use the funds to establish a partnership to award grants to eligible students in order to increase the amount of financial assistance students receive under this subpart for undergraduate education expenses.

(b) *Amount of LEAP Grants under GAP.* (1) The amount of a LEAP Grant under GAP by a State to an eligible student shall be not less than—

(i) The average undergraduate in-State tuition and mandatory fees for full-time students at the public institutions of higher education in the State where the student resides that are the same type of institution that the student attends (four-year degree-granting, two-year degree-granting, or non-degree-granting); minus

(ii) Other Federal and State aid the student receives.

(2) The Secretary determines the average undergraduate in-State tuition and mandatory fees for full-time students at public institutions in a State weighted by enrollment using the most recent data reported by institutions in the State to the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Educational Statistics.

(c) *Institutional participation.* (1) A State receiving an allotment under this subpart may restrict the use of LEAP Grants under GAP only to students attending institutions of higher education that are participating in the partnership.

(2) If a State provides LEAP Grants under subpart A of this part to students attending institutions of higher education located in another State, LEAP Grants under GAP may be used at institutions of higher education located in another State.

(d) *Early notification to potentially eligible students.* (1) Each State receiving an allotment under this subpart shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

(2) The notice shall include—

(i) Information about early information and intervention, mentoring, or outreach programs available to the student;

(ii) Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(iii) An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;

(iv) A nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(v) An explanation that in order to be eligible for a LEAP Grant under GAP, at a minimum, a student shall—

(A) Meet the eligibility requirements under § 692.120; and

(B) Enroll at a LEAP-participating institution of higher education in the State of the student's residence or an out-of-state institution if the State elects to make LEAP Grants under GAP for attendance at out-of-State institutions in accordance with paragraph (c)(2) of this section;

(vi) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP in accordance with § 692.120(a)(4); and

(vii) An explanation that a student is required to file a Free Application for Federal Student Aid to determine his or her eligibility for Federal and State financial assistance and may include a provision that eligibility for an award is subject to change based on—

(A) A determination of the student's financial eligibility at the time of the student's enrollment at a LEAP-participating institution of higher education or an out-of-State institution in accordance with paragraph (c)(2) of this section;

(B) Annual Federal and State spending for higher education; and

(C) Other aid received by the student at the time of the student's enrollment at the institution of higher education.

(e) *Award notification.* (1) Once a student, including a student who has received early notification under paragraph (d) of this section, applies for admission to an institution that is a partner in the partnership of the State of the student's residence, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State, the State shall—

(i) Issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts; and

(ii) Inform the student that the payment of the grant is subject to certification of enrollment and eligibility by the institution.

(2) If a student enrolls in an institution that is not a partner in the partnership of the student's State of residence but the State has not restricted eligibility to students enrolling in partner institutions, including, if applicable, out-of-State institutions, the State shall, to the extent practicable, follow the procedures of paragraph (e)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

(a) A State that receives an allotment under this subpart may reserve not more than two percent of the funds made available annually for State administrative functions required for administering the partnership and other program activities.

(b) A State must use not less than ninety-eight (98) percent of an allotment under this subpart to make LEAP Grants under GAP.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.113 What are the matching requirements for the GAP Program?

(a) The matching funds of a partnership—

(1) Shall be funds used for making LEAP Grants to eligible students under this subpart;

(2) May be—

(i) Cash; or

(ii) A noncash, in-kind contribution that—

(A) Is fairly evaluated;

(B) Has monetary value, such as a tuition waiver or provision of room and board, or transportation;

(C) Helps a student meet the cost of attendance at an institution of higher education; and

(D) Is considered to be estimated financial assistance under 34 CFR 673.5(c); and

(3) May be funds from the State, institutions of higher education, or philanthropic organizations or private corporations that are used to make LEAP Grants under GAP.

(b) The non-Federal match of the Federal allotment shall be—

(1) Forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State; and

(2) Thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State.

(c) Nothing in this part shall be interpreted as limiting a State or other member of a partnership from expending funds to support the activities of a partnership under this subpart that are in addition to the funds matching the Federal allotment.

(Authority: 20 U.S.C. 1070c–3a)

HOW DOES THE PARTNERSHIP SELECT STUDENTS UNDER THE GAP PROGRAM?

§ 692.120 What are the requirements for student eligibility?

(a) *Eligibility*. A student is eligible to receive a LEAP Grant under GAP if the student—

(1) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(2) Has graduated from secondary school or, for a home-schooled student, has completed a secondary education;

(3)(i) Has received, or is receiving, a LEAP Grant under GAP for each year the student remains eligible for assistance under this subpart; or

(ii) Meets at least two of the following criteria—

(A) As designated by the State, either has an EFC equal to zero, as determined under part F of the HEA, or a comparable alternative based on the State's approved criteria for the LEAP Program under subpart A of this part;

(B) Qualifies for the State's maximum undergraduate award for LEAP Grants under subpart A of this part in the award year in which the student is receiving an additional LEAP Grant under GAP; or

(C) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as determined by the State agency administering the programs under this part; and

(4) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

(b) *Priority*. In awarding LEAP Grants under GAP, a State shall give priority to students meeting all the criteria in paragraph (a)(3)(i) of this section.

(c) *Duration of eligibility*. (1) A student may receive a LEAP Grant under GAP if the student continues to demonstrate that he or she is financially eligible by meeting the provisions of paragraph (a)(3)(ii)(A) or (B) of this section.

(2) A State may impose reasonable time limits to degree completion.

(Authority: 20 U.S.C. 1070c–3a)

HOW DOES THE SECRETARY APPROVE A WAIVER OF PROGRAM REQUIREMENTS?

§ 692.130 How does a participating institution request a waiver of program requirements?

(a) The Secretary may grant, upon the request of an institution participating in a partnership that meets the requirements of § 692.113(b)(2), a waiver for the institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(b) An institution must submit a request for a waiver through the State agency administering the partnership.

(c) The State agency must forward to the Secretary, in a timely manner, the request made by the institution and may include any additional information or recommendations that it deems appropriate for the Secretary's consideration.

(Authority: 20 U.S.C. 1070c–3a)

Appendix A to Subpart C of Part 692—Grants for Access and Persistence Program (GAP) State Grant Allotment Case Study

State Grant Allotment Case Study

Basic Allotment Formula for LEAP, SLEAP, and GAP

1979 State Enrollment Data

State	Enrollment
Alabama	174,170
Alaska	18,594
Arizona	199,274
Arkansas	74,057
California	1,798,400
Colorado	159,836
Connecticut	152,431
Delaware	31,228
District of Columbia	85,259
Florida	366,344
Georgia	203,269
Hawaii	48,097
Idaho	39,198
Illinois	632,654
Indiana	234,086
Iowa	125,845
Kansas	129,705
Kentucky	142,958
Louisiana	166,660
Maine	41,954
Maryland	213,490
Massachusetts	376,361
Michigan	483,833
Minnesota	226,365
Mississippi	99,078
Missouri	231,327
Montana	32,270
Nebraska	83,922
Nevada	31,926
New Hampshire	40,803
New Jersey	306,983
New Mexico	59,420
New York	989,409
North Carolina	254,199
North Dakota	31,357
Ohio	464,069
Oklahoma	157,622
Oregon	150,353
Pennsylvania	514,421
Rhode Island	61,773
South Carolina	126,628
South Dakota	33,227
Tennessee	189,530
Texas	638,504
Utah	86,966
Vermont	29,398
Virginia	249,297
Washington	265,593
West Virginia	85,012
Wisconsin	244,111
Wyoming	19,633
American Samoa	836
Guam	3,710
Northern Marianas Island	143
Puerto Rico	104,640
Virgin Islands	2,122
Total	**11,712,350**

Basic Allotment Formula

1) Derive a percentage of total enrollment of all states:

$$\frac{\text{State Enrollment Data*}}{\text{Total State Enrollment (for all states/territories)}} = \text{\% of Total Enrollment}$$

2) Determine what portion of the Federal Appropriation a State/territory receives:

$$\text{\% of Total Enrollment} \times \text{Federal Appropriation Amount} = \text{Amount of the Allocation per State}$$

*Use FY 1979 enrollment data unless the appropriation exceeds $76,452,287 (the FY 1979 appropriation); 1976-1977 award year enrollment data used for FY 1979. Use most recent enrollment data if appropriation exceeds $76,452,287.

NOTE: This case study illustrates the requirements for allotting funds under the GAP Program under §692.110 and SLEAP Program funding during fiscal year 2010 (the 2010-2011 award year) under §692.70. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected funding for any State.

First Year of GAP Implementation (2010-11)

Conditions:
Appropriation for FY 2010: $63,852,000
LEAP funds for FY 2010: $30,000,000
SLEAP/GAP funds for FY 2010: $33,852,000

Illustrates:
First, must allot to SLEAP applicants (Table A)
Then, use remaining funds for GAP applicants (Table B)

First Year of GAP Implementation (2010-11): SLEAP Allotment (Table A)

Must calculate SLEAP first

Federal Appropriation Available after LEAP Allotment: $33,852,000

State	State Enrollment	Formula Amount	Formula Amount	State SLEAP Allotment	
§ Alabama		$0.00	$0		
‡ Alaska	18,594	$59,494.79	$59,495	**$59,495**	
Arizona	199,274	$637,612.43	$637,612		
§ Arkansas		$0.00	$0		
California	1,798,400	$5,754,299.06	$5,754,299		
Colorado	159,836	$511,423.57	$511,424		
Connecticut	152,431	$487,729.96	$487,730		
Delaware	31,228	$99,919.51	$99,920		
District of Columbia	85,259	$272,801.26	$272,801		
Florida	366,344	$1,172,182.46	$1,172,182		
§ Georgia		$0.00	$0		
§ Hawaii		$0.00	$0		
‡ Idaho	39,198	$125,420.94	$125,421	**$125,421**	
Illinois	632,654	$2,024,288.43	$2,024,288		
Indiana	234,086	$748,999.58	$749,000		
Iowa	125,845	$402,663.35	$402,663		
Kansas	129,705	$415,014.10	$415,014		
Kentucky	142,958	$457,419.42	$457,419		
Louisiana	166,660	$533,258.16	$533,258		
‡ Maine	41,954	$134,239.25	$134,239	**$134,239**	
Maryland	213,490	$683,099.04	$683,099		
§ Massachusetts		$0.00	$0		
‡ Michigan	483,833	$1,548,109.31	$1,548,109	**$1,548,109**	
Minnesota	226,365	$724,294.88	$724,295		
§ Mississippi		$0.00	$0		
Missouri	231,327	$740,171.67	$740,172		
‡ Montana	32,270	$103,253.58	$103,254	**$103,254**	
Nebraska	83,922	$268,523.29	$268,523		
Nevada	31,926	$102,152.89	$102,153		
New Hampshire	40,803	$130,556.42	$130,556		
New Jersey	306,983	$982,246.44	$982,246		
‡ New Mexico	59,420	$190,124.81	$190,125	**$190,125**	
New York	989,409	$3,165,789.19	$3,165,789		
North Carolina	254,199	$813,354.69	$813,355		
North Dakota	31,357	$100,332.27	$100,332		
‡ Ohio	464,069	$1,484,870.89	$1,484,871	**$1,484,871**	
Oklahoma	157,622	$504,339.48	$504,339		
Oregon	150,353	$481,081.03	$481,081		
Pennsylvania	514,421	$1,645,981.03	$1,645,981		
Rhode Island	61,773	$197,653.65	$197,654		
South Carolina	126,628	$405,168.70	$405,169		
§ South Dakota		$0.00	$0		
Tennessee	189,530	$606,434.78	$606,435		
Texas	638,504	$2,043,006.54	$2,043,007		
Utah	86,966	$278,263.11	$278,263		
Vermont	29,398	$94,064.10	$94,064		
Virginia	249,297	$797,669.87	$797,670		
Washington	265,593	$849,811.81	$849,812		
‡ West Virginia	85,012	$272,010.94	$272,011	**$272,011**	
Wisconsin	244,111	$781,076.34	$781,076		
§ Wyoming		$0.00	$0		
‡ American Samoa	836	$2,674.93	$2,675	**$2,675**	
‡ Guam	3,710	$11,870.80	$11,871	**$11,871**	
‡ No. Marianas Island	143	$457.55	$458	**$458**	
§ Puerto Rico		$0.00	$0		
‡ Virgin Islands	2,122	$6,789.71	$6,790	**$6,790**	
Total	10,579,818	$33,852,000.00	$33,852,000	**$3,939,317**	**Total SLEAP Allotments**
				$29,912,683	**Remaining balance for GAP allotment**

Key: ‡ Applies for SLEAP
§ Does not apply or qualify

First Year of GAP Implementation (2010-11): GAP Allotment-with Priority (Table B)

Demonstrate GAP actual allotment with required priority

Federal Appropriation Available for GAP Allotment: $29,912,683

State	State Enrollment with Priority Applied	Formula Amount with Priority Applied	State GAP Allotment with Priority Applied
§ Alabama		$0.00	**$0**
‡ Alaska		$0.00	**$0**
Arizona	199,274	$547,813.66	**$547,814**
§ Arkansas		$0.00	**$0**
# California	2,248,000	$6,179,858.41	**$6,179,858**
Colorado	159,836	$439,396.73	**$439,397**
# Connecticut	190,539	$523,800.04	**$523,800**
# Delaware	39,035	$107,309.06	**$107,309**
District of Columbia	85,259	$234,381.03	**$234,381**
# Florida	457,930	$1,258,871.25	**$1,258,871**
§ Georgia		$0.00	**$0**
§ Hawaii		$0.00	**$0**
‡ Idaho		$0.00	**$0**
# Illinois	790,818	$2,173,994.74	**$2,173,995**
Indiana	234,086	$643,513.49	**$643,513**
Iowa	125,845	$345,953.86	**$345,954**
Kansas	129,705	$356,565.18	**$356,565**
Kentucky	142,958	$392,998.31	**$392,998**
Louisiana	166,660	$458,156.23	**$458,156**
‡ Maine		$0.00	**$0**
Maryland	213,490	$586,894.12	**$586,894**
§ Massachusetts		$0.00	**$0**
‡ Michigan		$0.00	**$0**
Minnesota	226,365	$622,288.10	**$622,288**
§ Mississippi		$0.00	**$0**
Missouri	231,327	$635,928.87	**$635,929**
‡ Montana		$0.00	**$0**
Nebraska	83,922	$230,705.55	**$230,706**
Nevada	31,926	$87,766.09	**$87,766**
New Hampshire	40,803	$112,169.38	**$112,169**
# New Jersey	383,729	$1,054,888.50	**$1,054,888**
‡ New Mexico		$0.00	**$0**
New York	989,409	$2,719,932.17	**$2,719,932**
# North Carolina	317,749	$873,506.35	**$873,506**
North Dakota	31,357	$86,201.88	**$86,202**
‡ Ohio		$0.00	**$0**
# Oklahoma	197,028	$541,637.92	**$541,638**
# Oregon	187,941	$516,659.39	**$516,659**
# Pennsylvania	643,026	$1,767,709.60	**$1,767,710**
# Rhode Island	77,216	$212,271.13	**$212,271**
South Carolina	126,628	$348,106.37	**$348,106**
§ South Dakota		$0.00	**$0**
# Tennessee	236,913	$651,283.68	**$651,284**
# Texas	798,130	$2,194,097.15	**$2,194,097**
# Utah	108,708	$298,842.06	**$298,842**
# Vermont	36,748	$101,020.62	**$101,021**
# Virginia	311,621	$856,661.57	**$856,662**
# Washington	331,991	$912,659.66	**$912,660**
‡ West Virginia		$0.00	**$0**
# Wisconsin	305,139	$838,840.87	**$838,841**
§ Wyoming		$0.00	**$0**
‡ American Samoa		$0.00	**$0**
‡ Guam		$0.00	**$0**
‡ No. Marianas Islands		$0.00	**$0**
§ Puerto Rico		$0.00	**$0**
‡ Virgin Islands		$0.00	**$0**
Total	10,881,109	$29,912,683.00	**$29,912,683**

Key: # Priority States, 125% applied
‡ Applies for SLEAP
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12)

Conditions:
Appropriation for FY 2011: $65,852,000
LEAP funds for FY 2011: $30,000,000
GAP funds for FY 2011: $35,852,000
12 States initially apply for GAP funding (WV with priority)
9 initial applicants received SLEAP in FY 2010
AR, MA, and MS initial applicants with no FY 2010 SLEAP
AK, NM, No Marianas with FY 2010 SLEAP; do not apply or qualify for GAP
Priority States in FY 2010 continue as priority States
IN and IA, continuing States, convert to priority States

Illustrates:
Insufficient funds are available to fund all applicants and meet continuing award requirement (Table C)
Continuing awards are based on prior year SLEAP and GAP allotments (Table D)
New applicants receive remaining available fund: $2,250,076 (Table E)

Second Year of GAP Implementation (2011-12): GAP Allotment-Initial Calculation
Perform initial calculation to determine if negative changes from prior year awards (Table C)
Federal Appropriation Available for GAP Allotment: $35,852,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Calculation	Prior Year Allotment	Change from Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$562,777.39	$562,777	$547,814	14,964
Δ Arkansas	74,057	$209,147.23	$209,147	$0	209,147
# California	2,248,000	$6,348,663.51	$6,348,664	$6,179,858	168,805
Colorado	159,836	$451,399.01	$451,399	$439,397	12,002
# Connecticut	190,539	$538,107.83	$538,108	$523,800	14,308
# Delaware	39,035	$110,240.25	$110,240	$107,309	2,931
District of Columbia	85,259	$240,783.23	$240,783	$234,381	6,402
# Florida	457,930	$1,293,257.78	$1,293,258	$1,258,871	34,387
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
□ Idaho	39,198	$110,700.58	$110,701	$125,421	-14,720
# Illinois	790,818	$2,233,378.20	$2,233,378	$2,173,995	59,383
+ Indiana	292,608	$826,364.13	$826,364	$643,513	182,851
+ Iowa	157,306	$444,254.65	$444,255	$345,954	98,301
Kansas	129,705	$366,304.89	$366,305	$356,565	9,740
Kentucky	142,958	$403,733.20	$403,733	$392,998	10,735
Louisiana	166,660	$470,670.93	$470,671	$458,156	12,515
□ Maine	41,954	$118,483.91	$118,484	$134,239	-15,755
Maryland	213,490	$602,925.34	$602,925	$586,894	16,031
Δ Massachusetts	376,361	$1,062,895.62	$1,062,896	$0	1,062,896
□ Michigan	483,833	$1,366,411.44	$1,366,411	$1,548,109	-181,698
Minnesota	226,365	$639,286.13	$639,286	$622,288	16,998
Δ Mississippi	99,078	$279,810.00	$279,810	$0	279,810
Missouri	231,327	$653,299.50	$653,300	$635,929	17,371
□ Montana	32,270	$91,134.95	$91,135	$103,254	-12,119
Nebraska	83,922	$237,007.36	$237,007	$230,706	6,302
Nevada	31,926	$90,163.45	$90,163	$87,766	2,397
New Hampshire	40,803	$115,233.33	$115,233	$112,169	3,064
# New Jersey	383,729	$1,083,703.16	$1,083,703	$1,054,888	28,815
§ New Mexico		$0.00	$0	$0	0
New York	989,409	$2,794,228.12	$2,794,228	$2,719,932	74,296
# North Carolina	317,749	$897,366.50	$897,367	$873,506	23,860
North Dakota	31,357	$88,556.51	$88,557	$86,202	2,355
□ Ohio	464,069	$1,310,595.16	$1,310,595	$1,484,871	-174,276
# Oklahoma	197,028	$556,432.96	$556,433	$541,638	14,795
# Oregon	187,941	$530,772.13	$530,772	$516,659	14,113
# Pennsylvania	643,026	$1,815,995.23	$1,815,995	$1,767,710	48,286
# Rhode Island	77,216	$218,069.39	$218,069	$212,271	5,798
South Carolina	126,628	$357,615.02	$357,615	$348,106	9,509
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$669,073.73	$669,074	$651,284	17,790
# Texas	798,130	$2,254,029.72	$2,254,030	$2,194,097	59,933
# Utah	108,708	$307,005.04	$307,005	$298,842	8,163
# Vermont	36,748	$103,780.03	$103,780	$101,021	2,759
# Virginia	311,621	$880,061.59	$880,062	$856,662	23,400
# Washington	331,991	$937,589.29	$937,589	$912,660	24,930
□ + West Virginia	106,265	$300,107.09	$300,107	$272,011	28,096
# Wisconsin	305,139	$861,754.11	$861,754	$838,841	22,913
§ Wyoming		$0.00	$0	$0	0
□ American Samoa	836	$2,360.98	$2,361	$2,675	-314
□ Guam	3,710	$10,477.55	$10,478	$11,871	-1,393
§ No. Marianas Island		$0.00	$0	$0	0
§ Puerto Rico		$0.00	$0	$0	0
□ Virgin Islands	2,122	$5,992.82	$5,993	$6,790	-797
Total	12,694,845	$35,852,000.00	$35,852,000		

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
 # Priority States, 125% applied
+ New Priority States, 125% applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment-Continuing Awards (Table D)

No calculation: carry over GAP and SLEAP allotment amounts from prior year

Federal Appropriation Available for GAP Allotment: $35,852,000

State	Prior Year Allotment	No Formula Amount	State Allotment Continuing Awards
§ Alabama	$0		$0
§ Alaska			
Arizona	$547,814		$547,814
Δ Arkansas	$0		$0
# California	$6,179,858		$6,179,858
Colorado	$439,397		$439,397
# Connecticut	$523,800		$523,800
# Delaware	$107,309		$107,309
District of Columbia	$234,381		$234,381
# Florida	$1,258,871		$1,258,871
§ Georgia	$0		$0
§ Hawaii	$0		$0
□ Idaho	$125,421		$125,421
# Illinois	$2,173,995		$2,173,995
+ Indiana	$643,513		$643,513
+ Iowa	$345,954		$345,954
Kansas	$356,565		$356,565
Kentucky	$392,998		$392,998
Louisiana	$458,156		$458,156
□ Maine	$134,239		$134,239
Maryland	$586,894		$586,894
Δ Massachusetts	$0		$0
□ Michigan	$1,548,109		$1,548,109
Minnesota	$622,288		$622,288
Δ Mississippi	$0		$0
Missouri	$635,929		$635,929
□ Montana	$103,254		$103,254
Nebraska	$230,706		$230,706
Nevada	$87,766		$87,766
New Hampshire	$112,169		$112,169
# New Jersey	$1,054,888		$1,054,888
§ New Mexico	$0		$0
New York	$2,719,932		$2,719,932
# North Carolina	$873,506		$873,506
North Dakota	$86,202		$86,202
⊔ Ohio	$1,484,871		$1,484,871
# Oklahoma	$541,638		$541,638
# Oregon	$516,659		$516,659
# Pennsylvania	$1,767,710		$1,767,710
# Rhode Island	$212,271		$212,271
South Carolina	$348,106		$348,106
§ South Dakota	$0		$0
# Tennessee	$651,284		$651,284
# Texas	$2,194,097		$2,194,097
# Utah	$298,842		$298,842
# Vermont	$101,021		$101,021
# Virginia	$856,662		$856,662
# Washington	$912,660		$912,660
□+ West Virginia	$272,011		$272,011
# Wisconsin	$838,841		$838,841
§ Wyoming	$0		$0
□ American Samoa	$2,675		$2,675
□ Guam	$11,871		$11,871
§ No. Marianas Island	$0		$0
§ Puerto Rico	$0		$0
□ Virgin Islands	$6,790		$6,790
Total	$33,601,924		$33,601,924

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
 # Priority States Priority not
+ New Priority applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment - New Applicants (Table E)
Calculate allotments using basic allotment formula for new applicants with no FY 2010 GAP or SLEAP
Federal Appropriation Available for New Applicant Allotment: $2,250,076

State	State Enrollment with Priority Applied	Formula Amount	State Allotment
§ Alabama		$0.00	$0
§ Alaska		$0.00	$0
Arizona		$0.00	$0
Δ Arkansas	74,057	$303,248.57	$303,249
# California		$0.00	$0
Colorado		$0.00	$0
# Connecticut		$0.00	$0
# Delaware		$0.00	$0
District of Columbia		$0.00	$0
# Florida		$0.00	$0
§ Georgia		$0.00	$0
§ Hawaii		$0.00	$0
□ Idaho		$0.00	$0
# Illinois		$0.00	$0
+ Indiana		$0.00	$0
+ Iowa		$0.00	$0
Kansas		$0.00	$0
Kentucky		$0.00	$0
Louisiana		$0.00	$0
□ Maine		$0.00	$0
Maryland		$0.00	$0
Δ Massachusetts	376,361	$1,541,122.87	$1,541,123
⊔ Michigan		$0.00	$0
Minnesota		$0.00	$0
Δ Mississippi	99,078	$405,704.55	$405,705
Missouri		$0.00	$0
⊔ Montana		$0.00	$0
Nebraska		$0.00	$0
Nevada		$0.00	$0
New Hampshire		$0.00	$0
# New Jersey		$0.00	$0
§ New Mexico		$0.00	$0
New York		$0.00	$0
# North Carolina		$0.00	$0
North Dakota		$0.00	$0
□ Ohio		$0.00	$0
# Oklahoma		$0.00	$0
# Oregon		$0.00	$0
# Pennsylvania		$0.00	$0
# Rhode Island		$0.00	$0
South Carolina		$0.00	$0
§ South Dakota		$0.00	$0
# Tennessee		$0.00	$0
# Texas		$0.00	$0
# Utah		$0.00	$0
# Vermont		$0.00	$0
# Virginia		$0.00	$0
# Washington		$0.00	$0
□+ West Virginia		$0.00	$0
# Wisconsin		$0.00	$0
§ Wyoming		$0.00	$0
□ American Samoa		$0.00	$0
□ Guam		$0.00	$0
§ No. Marianas Island		$0.00	$0
§ Puerto Rico		$0.00	$0
□ Virgin Islands		$0.00	$0
Total	549,496	$250,076.00	$250,076

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
 # Priority States, + New priority } Priority not applied
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13)

Conditions:
Appropriation for FY 2012: $61,000,000 (reduction from prior year)
LEAP funds for FY 2012: $30,000,000
GAP funds for FY 2012: $31,000,000
One new applicant, NM, with priority
Priority States in FY 2010 and 2011 continue as priority States

Illustrates:
Funds are insufficient to fund continuing awards (Table F)
Continuing awards are ratably reduced based on prior year allotment (Table G)
IN, IA, and WV are subject to ratable reduction based on prior year allotment; no priority applied (Table G)
New applicant, NM, is also subject to ratable reduction; reduced to zero (Table G)

Third Year of GAP Implementation (2012-13): GAP Allotment-Initial Calculation (Table F)
Perform initial calculation to determine if there are negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: $31,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Initial Calculation	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$483,783.87	$483,784	$547,814	-64,030
Arkansas	74,057	$179,790.55	$179,791	$303,249	-123,458
# California	2,248,000	$5,457,541.53	$5,457,542	$6,179,858	-722,317
Colorado	159,836	$388,038.97	$388,039	$439,397	-51,358
# Connecticut	190,539	$462,577.02	$462,577	$523,800	-61,223
# Delaware	39,035	$94,766.52	$94,767	$107,309	-12,543
District of Columbia	85,259	$206,986.00	$206,986	$234,381	-27,395
# Florida	457,930	$1,111,731.31	$1,111,731	$1,258,871	-147,140
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$95,162.24	$95,162	$125,421	-30,259
# Illinois	790,818	$1,919,892.95	$1,919,893	$2,173,995	-254,102
+ Indiana	292,608	$710,372.59	$710,373	$643,513	66,859
+ Iowa	157,306	$381,897.42	$381,897	$345,954	35,944
Kansas	129,705	$314,888.98	$314,889	$356,565	-41,676
Kentucky	142,958	$347,063.71	$347,064	$392,998	-45,935
Louisiana	166,660	$404,605.81	$404,606	$458,156	-53,550
Maine	41,954	$101,853.07	$101,853	$134,239	-32,386
Maryland	213,490	$518,296.50	$518,297	$586,894	-68,598
Massachusetts	376,361	$913,703.64	$913,704	$1,541,123	-627,419
Michigan	483,833	$1,174,616.86	$1,174,617	$1,548,109	-373,492
Minnesota	226,365	$549,553.55	$549,554	$622,288	-72,735
Mississippi	99,078	$240,534.83	$240,535	$405,705	-165,170
Missouri	231,327	$561,599.96	$561,600	$635,929	-74,329
Montana	32,270	$78,342.91	$78,343	$103,254	-24,911
Nebraska	83,922	$203,740.12	$203,740	$230,706	-26,965
Nevada	31,926	$77,507.77	$77,508	$87,766	-10,258
New Hampshire	40,803	$99,058.75	$99,059	$112,169	-13,111
# New Jersey	383,729	$931,590.57	$931,591	$1,054,888	-123,298
□ + New Mexico	74,275	$180,319.79	$180,320	$0	180,320
New York	989,409	$2,402,019.89	$2,402,020	$2,719,932	-317,912
# North Carolina	317,749	$771,408.81	$771,409	$873,506	-102,098
North Dakota	31,357	$76,126.39	$76,126	$86,202	-10,076
Ohio	464,069	$1,126,635.16	$1,126,635	$1,484,871	-358,236
# Oklahoma	197,028	$478,329.97	$478,330	$541,638	-63,308
# Oregon	187,941	$456,270.99	$456,271	$516,659	-60,388
# Pennsylvania	643,026	$1,561,095.40	$1,561,095	$1,767,710	-206,614
# Rhode Island	77,216	$187,460.36	$187,460	$212,271	-24,811
South Carolina	126,628	$307,418.85	$307,419	$348,106	-40,688
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$575,160.06	$575,160	$651,284	-76,124
# Texas	798,130	$1,937,645.74	$1,937,646	$2,194,097	-256,451
# Utah	108,708	$263,912.68	$263,913	$298,842	-34,929
# Vermont	36,748	$89,213.08	$89,213	$101,021	-11,808
# Virginia	311,621	$756,532.88	$756,533	$856,662	-100,129
# Washington	331,991	$805,985.78	$805,986	$912,660	-106,674
+ West Virginia	106,265	$257,982.94	$257,983	$272,011	-14,028
# Wisconsin	305,139	$740,795.11	$740,795	$838,841	-98,046
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$2,029.58	$2,030	$2,675	-645
Guam	3,710	$9,006.89	$9,007	$11,871	-2,864
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$5,151.65	$5,152	$6,790	-1,638
Total	**12,769,120**	**$31,000,000.00**	**$31,000,000**		

Key: # Priority States, 125% applied
+ Priority not previously funded
> + New applicant, 125% priority
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13): Ratable Reduction (Table G)
Calculate ratable reduction based on proportions of prior year allotment
Federal Appropriation Available for GAP Allotment: $31,000,000

State	Prior Year Allotment	Formula Amount	State Allotment	Change from Prior Year Allotment
§ Alabama	$0	$0.00	$0	0
§ Alaska	$0	$0.00	$0	0
Arizona	$547,814	$473,675.75	$473,676	-74,138
Arkansas	$303,249	$262,209.05	$262,209	-41,040
# California	$6,179,858	$5,343,512.35	$5,343,512	-836,346
Colorado	$439,397	$379,931.33	$379,931	-59,465
# Connecticut	$523,800	$452,911.99	$452,912	-70,888
# Delaware	$107,309	$92,786.48	$92,786	-14,523
District of Columbia	$234,381	$202,661.26	$202,661	-31,720
# Florida	$1,258,871	$1,088,502.94	$1,088,503	-170,368
§ Georgia	$0	$0.00	$0	0
§ Hawaii	$0	$0.00	$0	0
Idaho	$125,421	$108,447.25	$108,447	-16,974
# Illinois	$2,173,995	$1,879,778.95	$1,879,779	-294,216
+ Indiana	$643,513	$556,424.12	$556,424	-87,089
+ Iowa	$345,954	$299,134.48	$299,134	-46,819
Kansas	$356,565	$308,309.73	$308,310	-48,255
Kentucky	$392,998	$339,812.21	$339,812	-53,186
Louisiana	$458,156	$396,152.03	$396,152	-62,004
Maine	$134,239	$116,071.88	$116,072	-18,167
Maryland	$586,894	$507,467.28	$507,467	-79,427
Massachusetts	$1,541,123	$1,332,556.38	$1,332,556	-208,567
Michigan	$1,548,109	$1,338,596.94	$1,338,597	-209,512
Minnesota	$622,288	$538,071.25	$538,071	-84,217
Mississippi	$405,705	$350,799.25	$350,799	-54,906
Missouri	$635,929	$549,865.96	$549,866	-86,063
Montana	$103,254	$89,280.20	$89,280	-13,974
Nebraska	$230,706	$199,483.20	$199,483	-31,222
Nevada	$87,766	$75,888.33	$75,888	-11,878
New Hampshire	$112,169	$96,989.03	$96,989	-15,180
# New Jersey	$1,054,888	$912,126.03	$912,126	-142,762
□ + New Mexico	$0	$0.00	$0	0
New York	$2,719,932	$2,351,832.39	$2,351,832	-368,100
# North Carolina	$873,506	$755,291.09	$755,291	-118,215
North Dakota	$86,202	$74,535.92	$74,536	-11,666
Ohio	$1,484,871	$1,283,917.20	$1,283,917	-200,954
# Oklahoma	$541,638	$468,335.80	$468,336	-73,302
# Oregon	$516,659	$446,737.72	$446,738	-69,922
# Pennsylvania	$1,767,710	$1,528,478.07	$1,528,478	-239,232
# Rhode Island	$212,271	$183,543.59	$183,544	-28,728
South Carolina	$348,106	$300,995.68	$300,996	-47,111
§ South Dakota	$0	$0.00	$0	0
# Tennessee	$651,284	$563,142.74	$563,143	-88,141
# Texas	$2,194,097	$1,897,160.81	$1,897,161	-296,936
# Utah	$298,842	$258,398.52	$258,399	-40,444
# Vermont	$101,021	$87,349.07	$87,349	-13,672
# Virginia	$856,662	$740,725.98	$740,726	-115,936
# Washington	$912,660	$789,145.62	$789,146	-123,514
+ West Virginia	$272,011	$235,198.61	$235,199	-36,812
# Wisconsin	$838,841	$725,317.03	$725,317	-113,524
§ Wyoming	$0	$0.00	$0	0
American Samoa	$2,675	$2,312.98	$2,313	-362
Guam	$11,871	$10,264.45	$10,264	-1,607
§ No. Marianas Island	$0	$0.00	$0	0
§ Puerto Rico	$0	$0.00	$0	0
Virgin Islands	$6,790	$5,871.08	$5,871	-919
Total	$35,852,000	$31,000,000.00	**$31,000,000**	

Key: # Ratable reduction; priority previously applied, now superseded
+ Ratable reduction; priority superseded
> + New applicant receives $0
§ Does not apply or qualify

Fourth Year of GAP Implementation (2013-14)

Conditions:
Appropriation for FY 2013: $79,000,000 (increase in funding from prior year)
LEAP funds for FY 2013: $30,000,000
GAP funds for FY 2013: $49,000,000
Priority States in FY 2010, 2011, and 2012 continue as priority States

Illustrates:
Sufficient funds are available, no ratable reduction necessary (Table H)
IN and IA priority is applied (Table H)
NM initially funded with priority (Table H)

Fourth Year of GAP Implementation (2013-14) (Table H)
Calculate using basic formula with all priorities applied
Federal Appropriation Available for GAP Allotment: $49,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$764,690.63	$764,691	$473,676	291,015
Arkansas	74,057	$284,185.06	$284,185	$262,209	21,976
# California	2,248,000	$8,626,436.62	$8,626,437	$5,343,512	3,282,924
Colorado	159,836	$613,351.92	$613,352	$379,931	233,421
# Connecticut	190,539	$731,170.13	$731,170	$452,912	278,258
# Delaware	39,035	$149,792.24	$149,792	$92,786	57,006
District of Columbia	85,259	$327,171.42	$327,171	$202,661	124,510
# Florida	457,930	$1,757,252.72	$1,757,253	$1,088,503	668,750
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$150,417.73	$150,418	$108,447	41,970
# Illinois	790,818	$3,034,669.50	$3,034,670	$1,879,779	1,154,891
+ Indiana	292,608	$1,122,847.00	$1,122,847	$556,424	566,423
+ Iowa	157,306	$603,644.30	$603,644	$299,134	304,510
Kansas	129,705	$497,727.74	$497,728	$308,310	189,418
Kentucky	142,958	$548,584.58	$548,585	$339,812	208,772
Louisiana	166,660	$639,538.22	$639,538	$396,152	243,386
Maine	41,954	$160,993.56	$160,994	$116,072	44,922
Maryland	213,490	$819,242.86	$819,243	$507,467	311,776
Massachusetts	376,361	$1,444,241.24	$1,444,241	$1,332,556	111,685
Michigan	483,833	$1,856,652.45	$1,856,652	$1,338,597	518,056
Minnesota	226,365	$868,649.17	$868,649	$538,071	330,578
Mississippi	99,078	$380,200.22	$380,200	$350,799	29,401
Missouri	231,327	$887,690.26	$887,690	$549,866	337,824
Montana	32,270	$123,832.34	$123,832	$89,280	34,552
Nebraska	83,922	$322,040.84	$322,041	$199,483	122,558
Nevada	31,926	$122,512.28	$122,512	$75,888	46,624
New Hampshire	40,803	$156,576.73	$156,577	$96,989	59,588
# New Jersey	383,729	$1,472,514.12	$1,472,514	$912,126	560,388
> + New Mexico	74,275	$285,021.61	$285,022	$0	285,022
New York	989,409	$3,796,741.11	$3,796,741	$2,351,832	1,444,909
# North Carolina	317,749	$1,219,323.60	$1,219,324	$755,291	464,033
North Dakota	31,357	$120,328.81	$120,329	$74,536	45,793
Ohio	464,069	$1,780,810.42	$1,780,810	$1,283,917	496,893
# Oklahoma	197,028	$756,069.95	$756,070	$468,336	287,734
# Oregon	187,941	$721,202.53	$721,203	$446,738	274,465
# Pennsylvania	643,026	$2,467,537.89	$2,467,538	$1,528,478	939,060
# Rhode Island	77,216	$296,308.31	$296,308	$183,544	112,765
South Carolina	126,628	$485,920.11	$485,920	$300,996	184,924
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$909,123.96	$909,124	$563,143	345,981
# Texas	798,130	$3,062,730.36	$3,062,730	$1,897,161	1,165,570
# Utah	108,708	$417,152.29	$417,152	$258,399	158,754
# Vermont	36,748	$141,014.23	$141,014	$87,349	53,665
# Virginia	311,621	$1,195,810.04	$1,195,810	$740,726	455,084
# Washington	331,991	$1,273,977.52	$1,273,978	$789,146	484,832
+ West Virginia	106,265	$407,779.49	$407,779	$235,199	172,581
# Wisconsin	305,139	$1,170,934.20	$1,170,934	$725,317	445,617
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$3,208.05	$3,208	$2,313	895
Guam	3,710	$14,236.69	$14,237	$10,264	3,972
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$8,142.93	$8,143	$5,871	2,272
Total	12,769,120	$49,000,000.00	$49,000,000		

Key: # Priority States, 125% applied
> New applicant
+ Priority initially applied
§ Does not apply or qualify

PART 693 [RESERVED]

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

Sec.

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

SOURCE: 65 FR 24760, Apr. 27, 2000, unless otherwise noted.

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The Secretary may establish the maximum amount that may be awarded each fiscal year for a GEAR UP Partnership grant in a notice published in the FEDERAL REGISTER. The maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or the amount calculated by multiplying—

(1) $800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a–23)

[65 FR 24760, Apr. 27, 2000, as amended at 75 FR 65798, Oct. 26, 2010]

§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a–22)

§ 694.3 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a–22)

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070–a22)

[65 FR 24760, Apr. 27, 2000, as amended at 75 FR 65798, Oct. 26, 2010]

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

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

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

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

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

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 1070a–21 to 1070a–28)

§ 694.7 What are the matching requirements for a GEAR UP grant?

(a) In order to be eligible for GEAR UP funding—

(1) An applicant must state in its application the percentage of the cost of the GEAR UP project the applicant will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period.

(b) Except as provided in §§ 694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (i.e., one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) over the project period.

(c) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

[75 FR 65798, Oct. 26, 2010]

§ 694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b)(1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (*e.g.*, there are few employers in the local area, large employers have left the local area, or significant reductions in employment in the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) At the time of application, the Secretary may provide tentative approval of an applicant's request for a waiver under paragraph (b)(1) of this section for all remaining years of the project period. Grantees that receive tentative approval of a waiver for more than two years under this paragraph must submit to the Secretary every two years by such time as the Secretary may direct documentation that demonstrates that—

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully, to obtain contributions

needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes—

(1) A fiscal agent that is eligible to receive funds under title V, or Part B of title III, or section 316 or 317 of the HEA, or a local educational agency;

(2) Only participating schools with a 7th grade cohort in which at least 75 percent of the students are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act; and

(3) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act.

(Authority: 20 U.S.C. 1070a–23)

[75 FR 65798, Oct. 26, 2010]

§ 694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to—

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that—

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues from State government, County government, or the local educational agency (LEA).

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (*e.g.*, large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under § 694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant an additional waiver request for up to 50 percent of the matching requirement for a period of up to two years beyond the expiration of any previous waiver.

(Authority: 20 U.S.C. 1070a–23)

[75 FR 65799, Oct. 26, 2010]

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

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a–22)

[65 FR 24760, Apr. 27, 2000. Redesignated at 75 FR 65798, Oct. 26, 2010]

§ 694.11 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 2 CFR part 200, subpart E—Cost Principles, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent of a modified total direct cost base.

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

[65 FR 24760, Apr. 27, 2000. Redesignated at 75 FR 65798, Oct. 26, 2010, as amended at 79 FR 76105, Dec. 19, 2014]

§ 694.12 Under what conditions do State and Partnership GEAR UP grantees make section 404E scholarship awards?

(a)(1) *State Grantees.* All State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable.

(2) *Partnership Grantees.* Partnerships may, but are not required, to award scholarships to eligible students. If a Partnership awards scholarships to eligible students pursuant to section 404E of the HEA, it must comply with the requirements of § 694.13 or § 694.14, as applicable.

(b)(1) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.13 unless it elects to provide the scholarships in accordance with the requirements of § 694.14 pursuant to paragraph (b)(2) of this section.

(2) *Election to use § 694.14 requirements.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, may provide such scholarship awards in accordance with the requirements of § 694.14 (rather than the requirements of § 694.13) provided that the grantee—

(i) Informs the Secretary, in writing, of its election to make the section 404E scholarship awards in accordance with the requirements of § 694.14; and

(ii) Such election does not decrease the amount of the scholarship promised to any individual student under the grant.

(c) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made on or after August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.14.

(Authority: 20 U.S.C. 1070a–25)

[75 FR 65799, Oct. 26, 2010]

§ 694.13 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008?

The following requirements apply to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 unless the grantee elects to provide such scholarship awards in accordance with the requirements of § 694.14 pursuant to § 694.12(b)(2).

(a)(1) The maximum scholarship amount that an eligible student may receive under this section must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of—

(i) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public institutions of higher education in the student's State; or

(ii) The maximum Federal Pell Grant award funded under section 401 of the HEA for the award year in which the scholarship is awarded.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP

scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) Scholarships provided under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(c) Grantees providing section 404E scholarship awards in accordance with this section—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (c)(1) of this section, award GEAR UP scholarships to other eligible students (*i.e.*, students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(d) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in activities under § 694.21 or § 694.22.

(e) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(f) A State or a Partnership that makes scholarship awards from GEAR UP funds in accordance with this section must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

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

[75 FR 65799, Oct. 26, 2010]

§ 694.14 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008?

The following requirements apply to section 404E scholarship awards provided by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were issued prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elected to use the § 694.14 requirements (rather than the § 694.13 requirements).

(a)(1) The maximum scholarship amount that an eligible student may receive under section 404E of the HEA must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in the activities required under § 694.21.

(c)(1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and § 694.16(a), States must use funds held in reserve to make scholarships to eligible students.

(3) Scholarships must be made to all students who are eligible under the definition in paragraph (b) of this section. A grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

(d) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

(g) A State or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(h) A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(Authority: 20 U.S.C. 1070a–25)

[75 FR 65800, Oct. 26, 2010]

§ 694.15 May a Partnership that does not award scholarships under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education using non-Federal funds?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds, and those funds may be used to satisfy the matching requirement.

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

[75 FR 65800, Oct. 26, 2010]

§ 694.16 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

The following requirements apply only to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008, and to any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements):

(a) Scholarship funds held in reserve by States under §694.14(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by eligible students as defined in §694.14(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

(Authority: 20 U.S.C. 1070a–25(e))

[75 FR 65800, Oct. 26, 2010]

§694.17 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

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

[65 FR 24760, Apr. 27, 2000. Redesignated at 75 FR 65798, Oct. 26, 2010]

§694.18 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate to each student participating in its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

[75 FR 65801, Oct. 26, 2010]

§694.19 What priorities does the Secretary establish for a GEAR UP grant?

The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21(b))

[75 FR 65801, Oct. 26, 2010]

§694.20 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an institution of higher education if the State or Partnership—

(1) Applies for and receives a new GEAR UP award after August 14, 2008, and

(2) In its application, requested a seventh year so that it may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of

higher education, provided that the grantee continues to provide all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee—

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services under this part to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

(Authority: 20 U.S.C. 1070a–21(b)(2))

[75 FR 65801, Oct. 26, 2010]

§ 694.21 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to eligible participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who—

(1) Obtain a secondary school diploma, and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of a State grantee that has not received a 100-percent waiver under section 404E(b)(2) of the HEA, providing scholarships in accordance with section 404E of the HEA.

(Authority: 20 U.S.C. 1070a–24(a))

[75 FR 65801, Oct. 26, 2010]

§ 694.22 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out one or more of the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership, and other activities that support participating students in—

(1) Meeting challenging State academic standards;

(2) Successfully applying for postsecondary education;

(3) Successfully applying for student financial aid; and

(4) Developing graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum.

(f) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(g) For Partnerships, providing scholarships described in section 404E of the HEA, and for all grantees providing appropriate administrative support for GEAR UP scholarships.

(h) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(i) Providing an intensive extended school day, school year, or summer program that offers—

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(j) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(k) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(l) Providing services to eligible students in the participating cohort described in § 694.3 through the first year of attendance at an institution of higher education.

(m) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(n) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(o) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, engaging other potential partners in a collaborative manner to provide matching resources and to participate in other activities authorized in §§ 694.21, 694.22, and 694.23.

(Authority: 20 U.S.C. 1070a–24(b))

[75 FR 65801, Oct. 26, 2010]

§ 694.23 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§ 694.21 and 694.22, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to—

(1) Secondary schools that are located within the State; or

(2) Partnerships that are eligible to apply for a GEAR UP grant and that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f)(1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f)(2)(ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to—

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare

financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for individuals who have dropped out of high school that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

(Authority: 20 U.S.C. 1070a–24)

[75 FR 65802, Oct. 26, 2010]

§ 694.24 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and § 694.20, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them. Examples of services that may be provided include—

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or though electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring, mentoring, and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.

(Authority: 20 U.S.C. 1070a–24)

[75 FR 65802, Oct. 26, 2010]

§ 694.25 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

If a Partnership or State is awarded a GEAR UP grant on or after August 14, 2008 (i.e., initial grant), the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and the grantee receives a new award in a subsequent GEAR UP competition (i.e., new grant), the grantee must—

(a) Continue to provide services required by or authorized under §§ 694.21, 694.22, and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade; and

(b) Provide the services specified in paragraph (a) of this section by using Federal GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

(Authority: 20 U.S.C. 1070a–21(b)(3)(B) and 1070a–22(d)(1)(C))

[75 FR 65803, Oct. 26, 2010]

PARTS 695–699 [RESERVED]

CHAPTER VII—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT, DEPARTMENT OF EDUCATION [RESERVED]

PARTS 700–799 [RESERVED]