DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1840–AC45

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations to modify requirements in these programs. These proposed modifications are intended to eliminate certain differences in the requirements of the FFEL and Direct Loan programs and to reduce burden.

DATES: Comments must be received on or before November 3, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Mr. Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272, or to the following internet address: parity@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5346, telephone 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Section 455(a) of the Higher Education Act of 1965, as amended (HEA), provides that, unless otherwise specified in statute, Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, and Federal Direct PLUS (Direct PLUS) Loans shall have the same terms, conditions, and benefits, and be available in the same amounts, as Federal Stafford Loans, Federal Unsubsidized Stafford Loans, and Federal PLUS Loans.

The Direct Loan Program regulations (34 CFR part 685) provide terms, conditions, benefits, and amounts for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans. The FFEL Program regulations (34 CFR part 682) provide terms, conditions, benefits, and amounts for Federal Stafford Loans, Federal Unsubsidized Stafford Loans, and Federal PLUS Loans.

The Secretary is proposing to amend 34 CFR parts 682 and 685 to change certain requirements and procedures in the FFEL and Direct Loan programs. These proposed changes are intended to eliminate certain differences in the requirements of these programs and to reduce burden on program participants.

A summary of each proposed change is provided below, in the order of its first occurrence in the proposed regulatory text.

Sections 682.201 and 685.301 Students With Need of $200 or Less

Under FFELP regulations, at § 682.201(a)(2)(i), a student with a calculated need of $200 or less is not required to file an application for a Subsidized Stafford Loan with a lender before applying for a Federal Supplemental Loans for Students (SLS) loan. The final rule for these proposed regulations would include a technical correction to apply § 682.201(a)(2)(i) to a borrower's application for an Unsubsidized Stafford loan, because Unsubsidized Stafford loans are effectively the replacement for SLS loans. This technical correction reflects a long-standing FFEL Program policy and has been included in this NPRM so that changes to FFEL and Direct Loan program regulatory text are made simultaneously.

Essentially, this technical correction to § 682.201(a)(2)(i) clarifies a method by which a school participating in the FFEL Program may choose not to certify a Subsidized Stafford Loan for a student with a calculated need of $200 or less, and may instead certify an Unsubsidized Stafford Loan that includes the amount of $200 or less that would have been awarded in the Subsidized Stafford Loan.

This provision is necessary to avoid processing delays and increased costs in delivering funds to students. Because of the proportionally higher cost of small loans, many lenders under the FFEL Program do not make loans of $200 or less. Without this provision, a school would be required to submit an application to a lender for a Subsidized Stafford Loan amount when it is already aware that the loan will be refused by the lender.

To make the practices of schools participating in the FFEL and Direct Loan programs more consistent, the Secretary proposes to establish a provision for the Direct Loan Program similar to that described above for the FFEL Program. The proposed regulations would allow, but not require, a school to choose not to originate a Direct Subsidized Loan for a student with a calculated need of $200 or less. Instead, a school participating in the Direct Loan Program would be able to originate a Direct Unsubsidized Loan that includes the $200 or less that would have been originated as a Direct Subsidized Loan. For example, a student with a cost of attendance of $2,000, estimated financial assistance of $0, and an expected family contribution of $1,850 would have a calculated need of $150. The school could choose to originate one Direct Unsubsidized Loan for $2,000 for this student, rather than a Direct Subsidized Loan for $150 and a Direct Unsubsidized Loan for $1,850.

This proposal is consistent with guidance provided in the preamble to the Direct Loan Program final rule published in the **Federal Register** on December 1, 1994 (59 FR 61669), in which the Secretary stated that ''an institution may establish a minimum loan amount.'' The proposed regulations would provide a ceiling of $200 to the ''minimum loan amount'' allowed in that preamble language, and would provide a regulatory basis for this action by a school. It is important to note that the Department has not established a minimum Direct Loan amount that it will process, and a school participating in the Direct Loan Program may continue to originate loans of $200 or less to meet borrower needs.

The Secretary realizes that an additional interest cost is incurred by a student who is awarded an amount in an unsubsidized loan rather than in a subsidized loan, even if the loan amount is $200 or less, because the government does not charge interest on a subsidized loan if it is not in repayment status or in a deferment. The Department estimates a maximum cost to a student of $66, for interest accruing on $200 over four years. However, this provision

was established for a school participating in the FFEL Program for the reasons described above, and it is proposed for a school participating in the Direct Loan Program to provide parity with the FFEL Program and to allow a school to control its administrative costs in making loans. The Secretary expects the proposed regulations to have little actual effect on costs to borrowers for receiving FFEL or Direct Loan program funds because current FFEL Program policy would remain unchanged and current Direct Loan Program policy would only be defined in regulations. The only change to current Direct Loan Program policy in the proposed regulations is the provision of a $200 limit to replace the currently unspecified ''minimum loan amount,'' so a school would no longer be able to establish a minimum loan amount higher than $200.

Sections 682.202(c)(5), 682.401(b)(10), and 685.202(c)(4) Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees

Under § 682.202(c)(5), a lender must refund, by a credit against the borrower's loan balance, the applicable portion of the origination fee previously deducted from the loan if (1) the borrower repays a portion of the loan within 120 days of disbursement, (2) the funds are not delivered within 120 days of disbursement, or (3) the funds are returned by the school to the lender.[1] Similarly, under § 682.401(b)(10)(vi)(B), a lender must refund the applicable portion of the insurance premium previously deducted by application to the borrower's account if (1) the loan is paid in full within 120 days of disbursement, (2) the loan check has not been negotiated within 120 days of disbursement, or (3) the loan or a portion of a loan is returned by the school to the lender. Direct Loan Program regulations at § 685.202(c)(4) provide for the refund of the applicable portion of the loan fee previously deducted from the loan if a portion of the loan is repaid within 120 days or should have been repaid by the school within 120 days of disbursement.

The Secretary proposes to revise §§ 682.202(c)(5)(i), 682.401(b)(10)(vi)(B)(*1*), and 685.202(c)(4) to provide that the applicable portion of the origination fee, insurance premium, or loan fee is to be repaid or returned in cases in which loan funds are returned by the school in order to comply with the HEA or with applicable regulations.

For example, the applicable portion of the origination fee, insurance premium, or loan fee *would* be repaid or returned to a borrower if during a program review it was determined that a school should have paid a larger refund to a student, even if that refund should have occurred more than 120 days after the disbursement was made. On the other hand, the applicable portion of the origination fee, insurance premium, or loan fee would not be repaid or returned to a borrower if a school assists the borrower by forwarding a prepayment to the lender more than 120 days after disbursement. In this example, the school would not be returning the funds in order to comply with the HEA or with applicable regulations; it would be returning the funds to comply with the borrower's request.

This proposed revision clarifies current FFEL requirements. Further, it expands the circumstances under which the Secretary would reduce the Direct Loan Program loan fee charged to borrowers by removing the requirement that the repayment should have been made within 120 days of disbursement. Under the proposed provision, students in both the FFEL and Direct Loan programs would receive the same benefits.

Sections 682.402 and 685.212 Discharge of a Loan

Under § 682.402(c)(1), FFEL Program regulations provide for the discharge of a borrower's or endorser's obligation to repay a Consolidation Loan, due to a total and permanent disability, for a borrower who became disabled (or whose condition substantially deteriorated, so as to render the borrower totally and permanently disabled) after applying for all of the Consolidation Loan's underlying loans. This discharge is made even if a borrower's condition did not substantially deteriorate after the borrower applied for the Consolidation Loan itself. Corresponding Direct Loan Program regulations, at § 685.212(b), do not allow for a discharge of a loan obligation for a Direct Consolidation Loan if the borrower did not become disabled (or whose condition did not substantially deteriorate, so as to render the borrower totally and permanently disabled) after the Direct Consolidation Loan was made.

For example, a borrower who received several loans, then became totally and permanently disabled, and then consolidated those loans into a Direct Consolidation Loan, remains obligated to repay the loan. Under current Direct Loan Program regulations, a borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time the borrower applied for the consolidation loan, unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled. In the example above, since the borrower's condition existed at the time the borrower applied for the Direct Consolidation Loan and did not substantially deteriorate after the Direct Consolidation Loan was made, the borrower would remain obligated to repay the loan. By contrast, corresponding FFEL regulations would allow a discharge of the borrower's obligation to make further payments on the loan.

The Secretary proposes to revise Direct Loan Program regulations to provide the same discharge conditions for a Direct Consolidation Loan as are currently provided for an FFELP Consolidation Loan. Because there has been some confusion regarding the FFEL rule on this issue, the Secretary also proposes to clarify the current FFEL Program provision and to make a conforming change to regulations at § 682.402(k)(2)(iii).

Sections 682.604(g)(2) and 685.304(b)(2) Exit Counseling

Section 485(b)(1)(A)(i) of the HEA requires a school to inform a student of ''the average anticipated monthly repayments'' during exit counseling. For an FFEL borrower, under § 682.604(g)(2)(i), a school is required to base the calculation of this amount on an average indebtedness for students at that school. Direct Loan Program regulations, at § 685.304(b)(2)(i), go beyond the requirements in FFEL regulations and require a school to base its calculation of this amount on the individual student's actual indebtedness.

The Secretary proposes to revise both FFEL and Direct Loan program regulations to allow a school to base its calculation of this amount upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study. This change would provide more flexibility in both loan programs, would promote

[1] The introductory language for § 682.202(c)(5) is incorrect as published in the Code of Federal Regulations (CFR), revised as of July 1, 1996. The CFR reflects the final rule published in the **Federal Register** on May 17, 1994 (59 FR 25745). However, a correction to the May 17, 1994, rule was published on July 13, 1994 (59 FR 35625). The correction was not included in the current CFR. To ensure that the correct introductory language is properly reflected in regulations, it is included in this NPRM and will be included in the final rule as a technical correction.

consistency in exit counseling, and would reduce burden for schools participating in both the FFEL and the Direct Loan programs.

A Direct Loan borrower's ability to make an informed choice when selecting a repayment plan is not lessened by this change. A school participating in the Direct Loan Program may, and is encouraged to, continue to receive information regarding an individual borrower's anticipated Direct Loan Program monthly repayment amount for distribution to the borrower during exit counseling. If a borrower does not select a repayment plan by the 60th day of the loan's grace period, he or she is sent the individualized information by the Direct Loan Servicer. In addition, the individualized repayment information is always available to a borrower who calls the Direct Loan Servicer, both when the borrower is selecting an initial repayment plan and when the borrower is considering a change from one plan to another.

Under § 685.304(b)(2) (ii) and (iii), a school is required to review available repayment options with a borrower and to provide the borrower with options concerning debt-management strategies. Should these proposed regulations be included in the final rule, to comply with § 685.304(b)(2) (ii) and (iii), a school that chooses not to provide the individualized repayment information to a student would be expected to advise the student of the availability of this information at the student's Direct Loan servicer and of its usefulness in selecting the most appropriate repayment plan.

The Secretary requests specific comments on whether the timing and availability of the individualized Direct Loan Program repayment information, as described above, provides all Direct Loan Program borrowers with an adequate opportunity to select the most appropriate repayment plan. In particular, the Secretary requests comments on the ability of a borrower to make an informed choice when selecting a repayment plan if he or she does not receive individualized information until the 60th day of the loan's grace period because his or her school has chosen to supply repayment information based on average indebtedness during its exit counseling.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of these programs.

Summary of Potential Costs and Benefits

Potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following heading: *Regulatory Flexibility Act Certification,* and in the information stated previously under Supplementary Information.

2. Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.24 *Records retention and examinations.*) (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Mr. Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW, Room 5121, FOB–10, Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these proposed regulations are small schools and loan holders participating in the federal student loan programs.

The provisions of this regulation provide added flexibility to schools and loan holders, or reduce the administrative burden on schools. Thus, no significant adverse economic impacts on small entities are expected to occur.

The Secretary particularly invites comments on the effect that these proposed regulations would have on small entities.

Paperwork Reduction Act of 1995

Section 685.212 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: William D. Ford Federal Direct Loan Program—685.212—Discharge of a loan obligation. The Secretary proposes to provide for the discharge of a Direct Consolidation Loan due to a total and permanent disability for a borrower who would be eligible for the discharge of all the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated. The Department may require additional certifications and information concerning the underlying loans in order to provide this benefit to the borrower. Annual public reporting burden for this collection of information is estimated to average 0.2 hours per response for 180 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. The total estimated annual recordkeeping and reporting burden hours equals 36 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Parts 682 and 685

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

(Catalog of Federal Domestic Assistance Numbers: 84.032: Federal Stafford Loan Program; 84.032: Federal PLUS Program; 84.032: Federal Supplemental Loans for Students Programs; 84.033 and 84.268: Federal Direct Student Loan Program.)

Dated: September 17, 1997.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 682 and 685 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.201 [Amended]

2. Section 682.201 is amended by removing the words ''receive an SLS loan'' in the introductory language of paragraph (a) and adding, in their place, ''receive an unsubsidized Stafford loan''; by removing the acronym ''SLS'' in paragraph (a)(1) and adding, in its place, ''unsubsidized Stafford''; by removing the words ''who, for a period of enrollment that begins prior to July 1, 1994, seeks an SLS'' in the introductory language to paragraph (a)(2) and adding, in their place, ''who seeks an unsubsidized Stafford''; and by removing the acronym ''SLS'' in paragraph (a)(3) and adding, in its place, ''unsubsidized Stafford''.

3. Section 682.202 is amended by revising paragraph (c)(5) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(c) * * *

(5) Shall 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 that is—

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

(ii) Repaid or returned within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

* * * * *

4. Section 682.401 is amended by revising paragraphs (b)(10)(vi)(B)(*1*) and (b)(10)(vi)(B)(*2*) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(*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;

* * * * *

5. Section 682.402 is amended by revising paragraph (c)(1) and by removing the words ''become totally and permanently disabled since applying for the Consolidation loan'' in paragraph (k)(2)(iii) and adding, in their place, ''is determined to be totally and permanently disabled under § 682.402(c)'', to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) *Total and permanent disability.* (1) (i) If a lender determines that an individual borrower has become totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(ii) Except as provided in paragraph (c)(1)(iii)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(iii)(A) For a Consolidation Loan, a borrower who would be considered totally and permanently disabled under paragraphs (c)(1)(i) and (ii) of this section for all loans that were included in the Consolidation Loan, if those loans had not been consolidated, is considered totally and permanently disabled.

(B) For the purposes of discharging a loan under paragraph (c)(1)(iii)(A) of this section, provisions in paragraphs (c)(1) (i) and (ii) of this section apply to all loans included in the Consolidation Loan.

(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c)(1)(iii)(A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.

* * * * *

6. Section 682.604 is amended by revising paragraph (g)(2)(i) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(g) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained FFEL Program loans for attendance at that school or in the borrower's program of study.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

8. Section 685.202 is amended by revising paragraph (c)(4) to read as follows:

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

* * * * *

(c) * * *

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of the loan that is—

(i) Repaid or returned within 120 days of disbursement; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

9. Section 685.212 is amended by revising paragraph (b) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower who would be considered totally and permanently disabled under paragraphs (b) (1) and (2) of this section for all loans that were included in the Direct Consolidation Loan, if those loans had not been consolidated, is considered totally and permanently disabled.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b)(1) and (2) of this section apply to all loans included in the Consolidation Loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

* * * * *

10. Section 685.301 is amended by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively, and by adding a new paragraph (a)(6) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(a) * * *

(6) 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.

* * * * *

11. Section 685.304 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study.

* * * * *

[FR Doc. 97–25377 Filed 9–24–97; 8:45 am]

BILLING CODE 4000–01–U