DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA16

Federal Family Education Loan (FFEL) Program and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These regulations are intended to reduce administrative burden for program participants, provide benefits to borrowers, and protect the taxpayers' interests.

DATES: *Effective Date:* These regulations are effective July 1, 2001.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that guaranty agencies may, at their discretion, choose to implement § 682.410(b)(6) on or after November 1, 2000.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Mr. George Harris, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act of 1965, as amended (HEA), requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations.

On July 27, 2000 the Secretary published a notice of proposed rulemaking (NPRM) for parts 682 and 685 in the **Federal Register** (65 FR 46316). In the preamble to the NPRM, the Secretary discussed on pages 46317–46320 the major proposed changes to the regulations. The Secretary invited comments on the proposed regulations by September 11, 2000 and 16 parties submitted comments.

On August 10, 2000, the Secretary published another NPRM for parts 600, 668, 675, 682, 685, and 690 in the **Federal Register** (65 FR 49134). In the preamble to that NPRM, the Secretary discussed on pages 49135–49147 the major proposed changes to the regulations. The Secretary invited comments on these proposed regulations by September 25, 2000, and 33 parties submitted comments. To consolidate all of the provisions for the FFEL and Direct Loan programs, these final regulations include not only the provisions from the July 27, 2000 NPRM, but also the amendments to parts 682 and 685 from the August 10, 2000 NPRM. We strongly urge the reader to refer to the preambles from both of the NPRMs for a full discussion of these regulations.

In addition to minor technical revisions, these regulations contain a few significant changes from these two NPRMs that we fully explain in the Analysis of Comments and Changes that follows. The only significant comment we received concerning the changes to parts 682 and 685 proposed in the August 10, 2000 NPRM is reflected under our discussion related to 682.604(b).

Analysis of Comments and Changes

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

FFEL and Direct Loan Program Changes

Sections 682.210 and 685.204—Deferment

Comment: One commenter did not agree with the proposal to remove the current provisions that prohibit the granting of an economic hardship for a period beginning more than 6 months before the date the lender receives the request and the supporting documentation. The commenter agreed that supporting documentation for other deferments (*e.g.*, a military or disability deferment) frequently must be certified and provided by other parties, but believed that documentation of a borrower's income and debt for purposes of an economic hardship deferment should be readily in the borrower's possession.

Discussion: While some forms of deferment documentation are more readily accessible to borrowers than other forms of documentation, the accessibility of documentation is not the primary reason why we have decided to eliminate the 6-month limitation on the retroactive application of a deferment. The primary rationale for eliminating this limitation is that borrowers frequently are unaware that they may qualify for a deferment until it is too late (because of the 6-month limitation) to take full advantage of a deferment they are entitled to receive. During the negotiated rulemaking sessions, representatives of schools, borrower organizations and FFEL lenders and servicers all indicated that this lack of awareness applies to all deferment categories, including economic hardship deferments. Therefore, we believe it is appropriate to eliminate the 6-month limit for that deferment as well as the others.

Changes: None.

Comment: One commenter recommended that the removal of the 6-month limitation on the application of a deferment be applied retroactively to assist borrowers who otherwise would have been eligible for the deferment, but who encountered loan problems because they did not submit documentation to support their deferment in a timely manner.

Discussion: We believe that borrowers have been, and should continue to be, responsible for providing deferment documentation to loan holders on a timely basis. The removal of the 6-month limitation on the retroactive application of deferments does not mean that the rules for granting deferments that existed in the past should be changed. In fact, we believe that applying these new rules to past requests for deferments would create significant confusion and complications for program participants without helping a significant number of borrowers. Upon the effective date of these regulations (July 1, 2001), the removal of the 6-month limitation on the retroactive application of a deferment will apply to any period of authorized deferment that includes July 1, 2001 or a later date. For program integrity reasons, a period of authorized deferment that does not include July 1, 2001 or a later date, and that was subject to the 6-month limit when the deferment was granted, may not be revised.

We want to stress that the documentation required to support an application for a deferment with a begin

date more than 6 months prior to the date of the application must be related to the date that the borrower claims he or she met the requirements for the deferment. For example, if a borrower requests an economic hardship deferment for a period that began two years prior to the date of the request, the documentation and income must support the borrower's qualification for that deferment at the start of that period. If the supporting documentation does not support the beginning date claimed by the borrower, but the lender determines that the borrower met the conditions for the deferment sometime after that date, a deferment may be granted retroactively only to the date the borrower met the conditions for the deferment.

Changes: None.

Comment: One commenter was concerned that the removal of the 6-month limitation on the retroactive application of a deferment would weaken the incentive for borrowers to submit their deferment documentation in a timely manner. The commenter envisioned situations in which borrowers who had defaulted on their loans would provide deferment documentation many months or even years after default. The commenter believed that this could result in significant issues related to loan repurchases, reapplication of payments, and credit bureau reporting. To help retain an incentive for borrowers to provide their deferment documentation timely, the commenter recommended a change to the existing requirements of § 682.210(a)(7) by removing the sentence, ''The 270- or 330-day period required to establish default does not run during the deferment and post-deferment grace periods.''

Discussion: We do not believe that the situation envisioned by the commenter is likely to occur. Under 34 CFR 682.210(a)(8), a borrower who has failed to make payments for 270 days and for whom the lender has submitted a default claim may receive a deferment on a loan only if he or she has made repayment arrangements acceptable to the lender. After a lender's default claim is paid by a guaranty agency, the borrower is ineligible for a deferment on the loan. Thus, unless there was a mistake by the lender and the loan was not properly in default at the time the claim was paid, the guaranty agency would not consider the borrower's request for a deferment under the conditions outlined by the commenter.

Changes: None.

Comment: One commenter believed that it was illogical to use old income data from a borrower's most recently filed Federal income tax return to determine if the borrower would qualify for a current or future economic hardship deferment.

Discussion: Section 435(o)(1)(B) of the HEA refers to the borrower's ''adjusted gross income'' as an income measurement to be used to determine if a borrower would have an economic hardship in repaying a loan. The term ''adjusted gross income'' is generally used to refer to the amount reported on a Federal income tax return. In light of the statutory use of this term, we believe that it is appropriate to refer to the borrower's most recent Federal income tax return as the source for this amount.

Changes: None.

Comment: One commenter thought it was confusing to have a stipulation in § 682.210(h)(2)(i) that an initial unemployment period may not be granted more than 6 months prospectively. The commenter believed that by specifying this requirement here, it was unclear why a similar specific restriction was not mentioned for subsequent periods of unemployment deferment.

Discussion: We agree that the clarity of the regulatory language concerning an initial period of unemployment deferment could be improved. For subsequent periods of unemployment, there already exists a 6-month prospective limit on the granting of an unemployment deferment in § 682.210(h)(4).

Changes: We have revised § 682.210(h)(2)(i) to clarify the length of time that an initial period of unemployment deferment can be granted.

Sections 682.402 and 685.214—False Certification Discharge

Comment: One commenter advocated a regulatory change in light of the ruling of the U.S. Court of Appeals for the District of Columbia, in *Jordan* v. *Riley* 194 F.3d 169 (D.C. Cir. 1999). In that ruling, the court held that the employment attempt provisions in the false certification discharge regulations of the FFEL and Direct Loan programs were inconsistent with the HEA. Consequently, the commenter believed that the regulations should be revised to require guaranty agencies or the Department to review all applications for false certification discharge that had been denied based on the borrower's employment history. The commenter stated that such borrowers should not be required to resubmit applications.

Discussion: The issue raised by the commenter does not relate to these regulations, but is more appropriately addressed in other ways. Accordingly, the regulations will not be revised, but we will work with the Federal student loan community to determine how to make information on this case generally available to the public.

Changes: None.

Comment: Several commenters noted that the ability-to-benefit regulations in 34 CFR 668.32 were revised October 22, 1999, and became effective July 1, 2000. The commenters noted that those regulations should have been incorporated into the changes proposed for § 682.402(e)(13)(ii) in the July 27, 2000 NPRM.

Discussion: We agree.

Changes: The regulations have been revised accordingly.

FFEL Changes

Section 682.410—Fiscal, Administrative, and Enforcement Requirements

Comment: One commenter recommended that the notice a guaranty agency is required to send to the borrower within 45 days after paying a lender's default claim should advise the borrower that he or she can contact the Department's Student Loan Ombudsman Office. The commenter believed that this option should be emphasized instead of suggesting that the borrower may wish to contact a lawyer. In the commenter's opinion, most borrowers who contact lawyers regarding disputed student loan repayment obligations incur unnecessary legal costs. Another commenter argued that it would be inconsistent to require guaranty agencies to advise borrowers that they may wish to contact a lawyer and not have the same type of requirement apply to the Federal Perkins Loan Program and the Direct Loan Program. The commenter believed that this requirement would cause an increase in the number of frivolous lawsuits and be detrimental to the interests of all parties, including borrowers who contacted lawyers. The commenter recommended a deletion of this requirement.

Discussion: Proposed § 682.410(b)(6)(v) specifically requires that the guaranty agency's notice to the borrower 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.'' This language was developed during negotiated rulemaking by a group that included representatives of guaranty agencies, collection contractors, and borrower and student representatives. The Department accepted the language because it

encouraged borrowers to get help in understanding their legal rights. We do not share the commenters' concerns that the addition of this language will encourage unnecessary litigation. The proposed rule specifically encourages borrowers to contact ''counselors or lawyers'' to get assistance. In some cases, a borrower may be helped by a debt management or other counselor. In other cases, legal advice may be needed. In any case, we believe that encouraging borrowers to get assistance in understanding their legal rights and obligations may contribute to resolving disputes between guaranty agencies and borrowers.

We do not agree with the commenter's suggestion that we should add a specific reference to the availability of the Department's Student Loan Ombudsman Office in this notice. Current regulations require a lender to notify the borrower of the availability of the Student Loan Ombudsman's Office as part of the lender's collection activity on a delinquent loan. In addition, under 34 CFR 682.410(b)(5)(vii), a guaranty agency is required to provide information on the availability of the Department's Student Loan Ombudsman Office if the borrower appeals an adverse decision resulting from the agency's administrative review of the borrower's loan obligation. We believe that these notices provide borrowers with sufficient notice of the opportunity to contact the Ombudsman's office. We do not believe that adding a reference to the Ombudsman's Office in the notice sent by the guaranty agency to the borrower under § 682.410(b)(6)(v) would improve this process. In fact, at this stage of the process it is most important for the borrower to be in contact with the guaranty agency directly. While the Ombudsman's Office may facilitate that communication in some cases, we believe it is better to encourage borrowers and their representatives to be directly in contact with the guaranty agency rather than to contact the Ombudsman's office.

In regard to the commenter's suggestion that the statement regarding the borrower's legal rights also be added to notices in the Direct Loan and Perkins programs, we note that the notices sent to borrowers in those programs are not the subject of these regulations. However, in collecting Direct loans that are in default, we generally follow the same or similar collection activities required of guaranty agencies under § 682.410(b). We will consider the commenter's suggestion when we revise the Direct Loan collection notices and when new regulations governing the Perkins Loan Program are developed.

Changes: None.

Comment: One commenter believed that the regulations should require a guaranty agency to advise borrowers of their legal rights, as known by the agency, and to disclose the number and types of court cases involving borrowers, and the results of those cases. The commenter also believed that the agency should be required to provide the names and contact information for at least three attorneys located near the borrower who have recently brought successful cases against the agency.

Discussion: We do not believe it is necessary or appropriate for the guaranty agency to provide the borrower the information suggested by the commenter. It would put the guaranty agency in the inappropriate position of providing legal advice to a possibly adverse party. Therefore, we have not accepted the commenter's suggestions.

Changes: None.

Comment: One commenter believed that the notice required to be sent to the borrower in accordance with § 682.410(b)(6)(vi) should be sent within a specified number of days, rather than within ''a reasonable time.''

Discussion: The regulations were revised to give guaranty agencies greater flexibility in the collection of defaulted loans from borrowers. We see no reason to undermine that goal by revising the regulations to be more prescriptive in this area.

Changes: None.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comments: One commenter believed that the starting ''clock'' for measuring the 3-year (or 5-year) record retention period should be tied to the date loans are reported to us on the guaranty agency's quarterly report, rather than from the dates provided in the regulations. The commenter thought this would make it easier for a guaranty agency to schedule its record destruction and facilitate the agency's retention of records for longer time periods if needed.

Discussion: The effect of the commenter's recommendation would be to expand the record retention period by requiring a guaranty agency to retain loan records for the 3-year period following the date the loan is repaid in full by the borrower, plus the additional period from the actual paid-in-full date to the date the paid-in-full loan is reported on the guaranty agency's next quarterly report. By setting minimum retention periods, the regulations already permit a guaranty agency to establish its record retention procedures consistent with its administrative needs even if that means the records are retained longer than the minimum period.

Changes: None.

Comment: One commenter recommended that the reduction in a guaranty agency's record retention period from 5 years to 3 years should apply to loans paid in full by any means, not just to loans repaid in full by the borrower.

Discussion: A loan that is paid in full by the borrower generally reflects the borrower's acknowledgment of his or her repayment obligation. The borrower also typically has his or her own repayment records. In contrast, in cases where parties other than the borrower are involved in the repayment of loans (for example, a closed school discharge claim), borrowers may have no direct involvement in or knowledge of the actual payment mechanisms, and thus have no personal repayment records. To protect borrower and taxpayer interests and preserve program integrity, we believe the 5-year retention period should be preserved in these types of cases.

Changes: None.

(The following discussion relates to regulations included in the August 10, 2000 NPRM.)

Section 682.604(b)—Releasing Loan Proceeds

Comments: The commenters supported the proposal eliminating the requirement that a school must determine a student's eligibility after it receives loan proceeds from a lender. Under the proposed regulations, a school may release loan proceeds to a student after it determines that the student continuously has maintained eligibility under the provisions in § 682.201. However, several of the commenters argued that the proposed language could be misinterpreted to require that a school continuously verify the eligibility of the student under those provisions and suggested that the language be revised.

Discussion: We agree. For the purpose of determining whether a school may release FFEL loan proceeds to a student, we wish to make clear that the school does not have to continuously verify the eligibility of the student. Rather, the school determines whether the student has maintained continuous eligibility in accordance with the provisions of § 682.201 before it releases loan proceeds.

Changes: Section 682.604(b)(2)(i) is revised accordingly.

Paperwork Reduction Act of 1995

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

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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

Summary of potential costs and benefits: We summarized the potential costs and benefits of these final regulations in the preamble to the July 27, 2000 NPRM on page 46319, and in the preamble to the August, 10, 2000 NPRM on page 49147.

Assessment of Educational Impact

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

Based on the response to the NPRMs and our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program, and 84.268, William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

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

Dated: October 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends 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.

2. Section 682.201 is amended by revising paragraph (b)(1)(vii)(F) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(1) * * *

(vii) * * *

(F) 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. Section 682.207 is amended by:

A. Revising paragraph (b)(1)(i)(B).

B. Revising paragraph (b)(1)(vi).

C. Revising paragraph (c)(3).

D. Removing ''(1)'' after the paragraph designation ''(f)''; removing paragraph (f)(2); and redesignating paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) as paragraphs (f)(1), (f)(2), and (f)(3), respectively.

The amendments read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(i) * * *

(B) Must disburse a Stafford or PLUS loan in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

(vi) Except as provided in paragraph (f) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

* * * * *

(c) * * *

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

4. Section 682.210 is amended by:

A. Revising paragraph (a)(5).

B. Revising paragraph (h)(2)(i).

C. Removing the words ''of up to one year at a time'' from paragraph (s)(6) introductory text.

D. Removing the words ''in accordance with paragraph (s)(6)(vi) of this section'' from paragraph (s)(6)(vii).

E. Revising paragraphs (s)(6)(iii), (iv), (v), (viii), (ix), and (x).

The revisions read as follows:

§ 682.210 Deferment.

(a) * * *

(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.

* * * * *

(h) * * *

(2) * * *

(i) Describing the borrower's diligent search for full-time employment during

the preceding 6 months, except that a borrower requesting an initial period of unemployment deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. The initial period of unemployment deferment can be granted for a period of unemployment beginning up to 6 months before the date the holder receives the borrower's request and documentation for the deferment, and can be granted for up to 6 months after that date. For a continuation of an unemployment deferment following the initial period, the borrower's written certification must include information showing that the borrower made at least six diligent attempts to secure employment to support the prior 6-month period covered by the certification. This information could be the name of the employer contacted and the employer's address and telephone number, or other information acceptable to the holder showing that the borrower made six diligent attempts to obtain full-time employment;

* * * * *

(s) * * *

(6) * * *

(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 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that—

(A) Does not exceed twice the amount described in paragraph (s)(6)(iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s)(6)(iii) of this section.

* * * * *

(viii) For an initial period of deferment granted under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit—

(A) Evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return; and

(B) For periods of deferment under paragraphs (s)(6)(iv) and (v) of this section, evidence that would enable the lender to determine the amount of the monthly payments to all other entities for Federal postsecondary education loans that would have been owed by the borrower during the deferment period.

(x) 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.

* * * * *

5. Section 682.402 is amended by:

A. Revising paragraph (e)(3) introductory text.

B. In paragraph (e)(3)(ii) introductory text, removing the words ''the school's''.

C. In paragraph (e)(3)(ii)(A) adding the word ''and'' after the semicolon, and in paragraph (e)(3)(ii)(B), removing the word ''and'' after the semi-colon.

D. Removing paragraph (e)(3)(ii)(C).

E. Revising paragraph (e)(13)(ii)(A).

F. Revising paragraph (e)(13)(ii)(B) introductory text.

G. In paragraph (e)(13)(ii)(B)(*2*), removing the word ''or'' that appears after the semi-colon.

H. In paragraph (e)(13)(ii)(C), removing the period and adding in its place, ''; or''.

I. Adding a new paragraph (e)(13)(ii)(D).

J. Adding a new paragraph (e)(13)(ii)(E).

K. Adding a new paragraph (e)(13)(iv).

L. Adding a new paragraph (e)(14).

The additions and revisions read as follows:

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

* * * * *

(e) * * *

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(14) 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—

* * * * *

(13) * * *

(ii) * * *

(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—

* * * * *

(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).

* * * * *

(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) *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.

* * * * *

6. Section 682.406 is amended by revising paragraph (a)(11) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) * * *

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6).

* * * * *

7. Section 682.410 is amended by:

A. Amending paragraph (b)(5)(i) introductory text by removing the reference to paragraph ''(b)(6)(iii)'' and adding in its place ''(b)(6)(v)''.

B. Amending paragraph (b)(5)(ii) introductory text by removing the reference to paragraph ''(b)(6)(ii)'' and adding in its place ''(b)(6)(v)''.

C. Revising paragraph (b)(6).

D. Removing paragraph (b)(7).

E. Redesignating paragraphs (b)(8) through (b)(11) as paragraphs (b)(7) through (b)(10), respectively.

F. Amending redesignated paragraph (b)(7)(ii) by removing the reference to paragraph ''(b)(8)(i)'' and adding in its place ''(b)(7)(i)''.

G. Amending redesignated paragraph (b)(7)(ii)(D) by removing the reference to paragraph ''(b)(6)(i)'' and adding in its place ''(b)(6)''.

H. Amending redesignated paragraph (b)(8) by removing the reference to paragraphs ''(b)(2), (5), (6), and (7)'' and adding in its place ''(b)(2), (5), and (6)''.

I. Amending redesignated paragraph (b)(9)(i)(E) by removing the references to paragraphs ''(b)(10)(i)(D)'' and ''(b)(10)(i)(J)'' and adding in their place ''(b)(9)(i)(D)'' and ''(b)(9)(i)(J)'', respectively.

J. Amending redesignated paragraph (b)(9)(i)(F) by removing the reference to paragraph ''(b)(10)(i)(H)'' and adding in its place ''(b)(9)(i)(H)''.

K. Amending redesignated paragraph (b)(9)(i)(I) by removing the reference to paragraph ''(b)(10)(i)(H)'' and adding in its place ''(b)(9)(i)(H)''.

L. Amending redesignated paragraph (b)(9)(i)(K) by removing both references to paragraph ''(b)(10)(i)(B)'' and adding in their place ''(b)(9)(i)(B)''.

M. Amending redesignated paragraph (b)(9)(i)(L) by removing both references to paragraph ''(b)(10)(i)(B)'' and adding in their place ''(b)(9)(i)(B)''.

N. Amending redesignated paragraph (b)(10)(ii) by removing the reference to ''§ 682.410(b)(11)(i)'' and adding in its place ''§ 682.410(b)(10)(i)''.

The revisions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(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) 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.

(iii) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)(iv) of this section, by following the procedures described in paragraph (b)(9) of this section.

(iv) 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.

(v) 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.

(vi) Within a reasonable time after all of the information described in paragraph (b)(6)(v) 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 national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged.

* * * * *

8. Section 682.414 is amended by revising paragraph (a)(2) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(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.

* * * * *

9. Section 682.604 is amended by:

A. Revising paragraph (b)(2)(i).

B. Revising paragraph (c)(6).

C. Revising paragraph (c)(7).

The amendments read as follows:

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

* * * * *

(b) * * *

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines has maintained continuous eligibility in accordance with the provisions of § 682.201 for the loan period certified by the school on the student's loan application.

* * * * *

(c) * * *

(6) Unless the provision of § 682.207(d) or the provisions of paragraph (c)(7) of this section apply—

(i) If a loan period is more than one payment period, the school must deliver 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 deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7)(i) If a school measures academic progress in an educational program in

credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not deliver a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of paragraph (c)(7) 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 longer than any other term in that loan period.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

11. Section 685.214 is amended by:

A. Removing the words ''the school's'' in paragraph (c)(1).

B. Adding the word ''and'' after the semicolon at the end of paragraph (c)(1)(i).

C. Removing ''; and'' at the end of paragraph (c)(1)(ii) and adding, in its place, a period.

D. Removing paragraph (c)(1)(iii).

E. Adding a new paragraph (c)(6).

The revisions read as follows:

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

* * * * *

(c) * * *

(6) *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.

* * * * *

12. Section 685.301 is amended by revising paragraph (b)(5) to read as follows:

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

* * * * *

(b) * * *

(5)(i) If a school measures academic progress in an educational program in credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not make a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of this paragraph, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks longer than any other term in that loan period.

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