

DEPARTMENT OF EDUCATION**34 CFR Parts 674, 682, and 685**

RIN 1845-AA12

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

SUMMARY: The Secretary amends the regulations governing the Federal Perkins (Perkins) Loan Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program to strengthen and improve the processes for granting loan discharges based on a borrower's death or total and permanent disability.

DATES: Effective July 1, 2002, except the following provisions of these regulations are effective July 1, 2001: §§ 674.9(h)(3), 674.51(s), 674.61(a), 682.200(b), the redesignations of § 682.201(a)(5)–(a)(7), 682.201(a)(6)(iii), 682.402(b)(2) and (3), 682.402(g)(1)(iii), 685.200(a)(1)(iv)(A) and (B), and 685.212(a).

For additional information see the discussion of effective dates under the Analysis of Comments and Changes section that follows.

FOR FURTHER INFORMATION CONTACT: For the FFEL and Perkins Loan Programs, Mr. Brian Smith, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building No. 3, Washington, DC 20202–5345. 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: On August 2, 2000, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins, FFEL, and Direct Loan programs in the *Federal Register* (65 FR 47634). In the preamble to the NPRM, the Secretary discussed the following major proposed changes:

Amending §§ 674.61, 682.402, and 685.212 to require that an original or certified copy of a death certificate be provided to support a discharge of a

loan based on death, although other documentation may be accepted under unusual circumstances (page 47636).

Amending §§ 674.51, 682.200, and 685.102 to revise the definition of “totally and permanently disabled” (page 47636).

Amending §§ 674.61(b)(3)(ii), 682.402(c)(2)(ii), and 685.213(b)(2) to allow disability discharges to be granted based on documentation from the Social Security Administration (SSA) in lieu of a physician's certification of total and permanent disability.

Amending §§ 674.61(b)(3)–(6), 682.402(c)(2)–(12), and 685.213(b) to change the process for considering applications for a disability discharge on a student loan by placing loans in a conditional discharge status for up to three years, before granting a final discharge. We proposed requiring FFEL and Perkins loans to be assigned to us after a determination by the loan holder or guaranty agency that the borrower meets the criteria for a total and permanent disability discharge (pages 47637–47638).

Amending §§ 674.61(b)(1), (6), and (7), 682.402(c)(1), (12), and (13), and 685.213(a)(1) and (d) to establish the rules for granting a borrower a conditional discharge if the borrower appears to meet the requirements for a total and permanent disability discharge. When a loan is in a conditional discharge status, collection activity on the loan is suspended for up to three years from the date of the onset of the disability.

Amending §§ 674.61(b)(2), (8) and (9), 682.402(c)(14) and (15), and 685.213(a)(2) and (c) to discharge the loan if the borrower continues to meet the disability discharge criteria at the end of the three-year conditional discharge period.

If the borrower does not the disability discharge criteria collection activity resumes, but the borrower is not obligated to pay interest that has accrued on the loan during the conditional discharge period (page 47638).

Amending §§ 674.61(b)(11) and (12), 682.402(r)(2) and (3), and 685.212(g)(2) to require that payments received by a Perkins Loan school, FFEL lender or guaranty agency on a loan that has been assigned to us prior to a final determination of eligibility for a disability discharge must be sent to us. We will apply those payments to the loan. If the loan is ultimately discharged, the payments will be returned to the sender (page 47639).

Amending §§ 674.9, 682.201, and 685.200 to allow a borrower whose loan is in a conditional disability discharge

period to be eligible for additional title IV loans if a physician or the SSA certifies that the borrower is able to engage in substantial gainful activity; the borrower acknowledges that neither the conditionally discharged loan nor the new loan can be discharged on the basis of the borrower's current disability unless that disability substantially deteriorates; and collection activity resumes on the conditionally discharged loan (page 47639).

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follows.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under title IV of the Act, 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.

These regulations were published in proposed form on August 2, 2000. The negotiated rulemaking committee was unable to reach consensus on the proposed regulations. The Secretary invited comments on the proposed regulations by September 18, 2000. In response to the Secretary's invitation in the NPRM, 46 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

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.

Effective Date

Comment: Many commenters responded to our request for comments on whether a later effective date should be considered for these regulations. Most commenters supported an effective date of July 1, 2001 for the death discharge provisions, but generally recommended a delay in the effective date for the total and permanent disability discharge provisions until July 1, 2002 or 90 days after the issuance of a revised discharge application form and implementation guide to the new discharge procedures, whichever is later.

Discussion: We agree that the operational changes needed to implement some of the conditional discharge provisions of the regulations support a delay in the effective date of those provisions. We must develop a system for monitoring borrowers' earnings during the conditional discharge period, revise the assignment process for guaranty agencies and develop a comparable assignment process for the Perkins Loan Program. We must also retain and train an organization that will handle initial and final discharge determinations for the Secretary. We may also have to retain a loan servicer to handle pre-default disability assignments that must be converted back to repayment. We will need to revise the current total and permanent disability discharge request form to reflect the new process and to allow for its use in the Perkins Loan Program. Procedural guidance will need to be developed and distributed to schools, lenders, and guaranty agencies.

Change: As suggested by some of the commenters, the provisions that govern death discharges, §§ 674.61(a), 682.402(b), 682.402(g)(1)(iii), and 685.212(a), will become effective on July 1, 2001. We will also implement the revised definition of "totally and permanently disabled" in §§ 674.51(s) and 682.200(b) on July 1, 2001.

Even though we will delay the implementation of the conditional discharge until July 1, 2002, we have decided that for any loan that is discharged due to total and permanent disability on or after July 1, 2001 through June 30, 2002, the borrower must reaffirm that loan if the borrower receives a new title IV loan within three years from the date that the borrower became totally and permanently disabled as certified by the physician. These provisions, §§ 674.9(h)(3), 682.201(a)(6)(iii), and 685.200(a)(1)(iv)(A) and (B) will become effective on July 1, 2001.

All other changes related to implementing the new processes for granting total and permanent disability discharges will become effective on July 1, 2002.

Sections 674.61, 682.402, and 685.212 Death Discharge

Comment: In response to the requirement in the proposed regulations that an "original" or "certified" copy of the death certificate be submitted to support a request for a discharge based on death, two commenters indicated that the terms "original" or "certified" may be defined differently in different States. One of the commenters recommended that the regulation be

revised to indicate that a death discharge must be based on an "official death certificate as defined by the State in which the borrower died." The other commenter suggested that the regulations specify what is required for a copy of a death certificate to be considered "certified."

Discussion: We believe the term "original" is self-explanatory. We also believe it is implicit in the term "certified" that the governmental entity issuing the death certificate defines what constitutes a "certified" copy of the original.

Change: None.

Comment: Several commenters suggested that in lieu of requiring each of a borrower's loan holders to obtain an original or certified copy of the death certificate, the regulations should allow a loan holder to discharge a borrower's loan if the National Student Loan Data System (NSLDS) indicates that one of the borrower's other title IV loans has been discharged due to death. The commenters felt that if one of the borrower's loan holders obtained the necessary documentation to establish that the borrower had died and reported this information to NSLDS, this should be sufficient to discharge the borrower's other title IV loans. One commenter suggested that NSLDS should be modified to indicate whether a death discharge was based on a death certificate or alternative documentation. The commenter argued that, with this information, a loan holder could choose to seek independent corroboration of the borrower's death if a loan had been cancelled based on alternative documentation. The commenters believed that this approach would reduce burden on the families of deceased borrowers.

One commenter proposed an alternative approach whereby a loan holder would be required to notify the Secretary upon learning of a borrower's death and the Secretary would assume the responsibility of obtaining confirmation.

Discussion: As discussed in the preamble to the NPRM (65 FR 47634, 47636), the changes to this regulation are based in part on the findings of a report issued by the Department of Education's Office of Inspector General (OIG) in June 1999. That report concluded, among other things, that death discharges were being granted without reliable supporting documentation. In light of the OIG's findings with regard to fraudulent death discharge claims, we believe it is important to require each of a borrower's loan holders to independently obtain the required

documentation of a borrower's death. We note that this is the current requirement and this regulation will not increase any burden on the borrower or loan holder. However, we appreciate the commenters' suggestions and will consider whether to explore ways in which NSLDS might be used in the future to improve the processing of death discharge applications. With regard to the suggestion that the Secretary should obtain the necessary documentation of a borrower's death, we believe that—as is the case with other types of loan discharges—documentation of a borrower's eligibility for discharge should remain the responsibility of the loan holder.

Change: None.

Comment: Two commenters felt that the problems identified by the OIG were not significant enough to warrant requiring an original or certified copy of the death certificate in all but exceptional circumstances. One of the commenters noted that while his institution generally requests an official copy of the death certificate, it would be preferable to retain the current option of using an alternative proof of death that is acceptable under State law. Another commenter felt that the proposed requirements would place an undue burden on families, on the grounds that certified copies of death certificates can be difficult and expensive to obtain. The commenter did not believe that allowing alternative documentation in "exceptional circumstances" would reduce burden for the majority of families of deceased borrowers. The commenter recommended keeping the current documentation requirements, but encouraging loan holders to more closely inspect documents for fraud.

Two commenters noted that obtaining an original or certified copy of the death certificate may not be the only official means of confirming an individual's death. One of the commenters reported that some State social service agencies are beginning to put public records on their websites, and suggested that loan holders should be allowed to approve death discharges if they can obtain electronic verification of an individual's death directly from an official source.

One commenter recommended that § 682.402(b)(2) be revised to provide that a guaranty agency must maintain documentation of death discharges based on alternative documentation "as required in § 682.414(a)." The commenter believed that this change would clarify that documentation of exceptional circumstances must be maintained within the borrower's record as is the case with all other claim documentation.

Discussion: We do not agree with the commenters' view that the problems identified by the OIG are not significant enough to warrant changing the requirements for documentation of death. Even a small number of improperly granted death discharges represents a serious problem and undermines program integrity. We believe that the most appropriate response to the OIG's findings is to require loan holders to obtain proof of a borrower's death in the form of an original or certified copy of the death certificate. In the vast majority of cases, obtaining an original or certified copy of the death certificate is not unduly burdensome or costly. In addition, such documentation is generally required by insurance companies and other parties in order to pay benefits and close accounts.

We are interested in the commenters' suggestions regarding the possibility of using electronic records and we will consider whether to explore these other means for obtaining official proof of death that could potentially be used in the future.

Finally, we do not believe it is necessary to cross-reference the general record keeping requirements in § 682.414.

Change: None.

Comment: Several commenters recommended that loan holders not be limited to obtaining acceptable documentation of death only from the borrower's representative or parent, since a loan holder may obtain a death certificate directly from an official source.

Discussion: We agree with the commenters. However, we emphasize that the loan holder must still obtain an original or certified copy of the death certificate and may not simply contact an official source for verification of a borrower's death.

Change: We have revised § 682.402(b)(2) and § 685.212(a)(1) and (2) to eliminate the suggestion that a parent or representative must provide the necessary documentation of the borrower's death. No changes are needed in the Perkins Loan Program regulations.

Comment: Many commenters recommended that we reconsider the proposed requirement that only the chief executive officer (CEO) of the guaranty agency or chief financial officer (CFO) of the institution would be authorized to approve a death discharge application that is based on documentation other than the original or a certified copy of a death certificate. The commenters felt that the proposed requirement was overly restrictive, and

could result in delays in the processing of discharges. Many of the commenters believed that it would be more appropriate to allow the CEO or CFO to designate another official of the organization who would be authorized to approve alternative documentation of a borrower's death.

Discussion: As explained in the preamble to the proposed regulation, the requirement that a senior official of the guaranty agency or institution approve the use of alternative documentation is intended to ensure that such documentation is used only rarely, and in exceptional circumstances. We believe that allowing the CEO or CFO to designate another official who could approve alternative documentation would be contrary to the intent of the regulations. Since very few death discharges should be approved based on such alternative documentation, we believe the restrictions will not adversely affect the processing of death discharges.

Change: None.

Comment: One commenter suggested that the proposed Direct Loan regulations appear to allow the use of alternative documentation of death on a broader basis than would be permitted in the Perkins and FFEL programs. The commenters noted that § 674.61(a) and § 682.402(b)(2) state that discharges based on alternative documentation of death may be approved only "under exceptional circumstances and on a case-by-case basis," while the corresponding section of the Direct Loan Program regulations, § 685.212(a)(2), does not contain the same restrictive language. The commenter recommended that the Direct Loan regulations be revised to include the same language as the Perkins and FFEL program regulations.

Discussion: We did not intend to establish a less restrictive requirement for the Direct Loan Program and agree with the commenter's recommendation.

Change: We have revised § 685.212(a)(2) to indicate that the Secretary will approve discharges in the Direct Loan Program based on alternative documentation only in exceptional circumstances and on a case-by-case basis.

Comment: Several commenters recommended that § 682.402(b)(3) of the proposed regulation be revised to provide that the lender must suspend collection activity against the borrower "and any endorser" after receiving reliable information indicating that the borrower has died. The commenters noted that this would be consistent with the corresponding provision for total

and permanent disability discharges in § 682.402(c)(3).

Discussion: We agree with the commenters.

Change: We have revised § 682.402(b)(3) to authorize suspension of collection activities against an endorser under these circumstances.

Sections 674.51, 682.200, and 685.102 Definitions

Comment: Many commenters supported the removal of the criteria "or attend school" from the definition of totally and permanently disabled. However, one commenter expressed concerns about a borrower's eligibility to receive loans after the end of the three-year conditional discharge period. The commenter noted that the borrower might later be unable to repay those loans because of a pre-existing medical condition that prevents the borrower from working.

Discussion: We thank the commenters for their support. In response to the commenter's concerns about a borrower being unable to repay loans received after the end of the three-year conditional discharge period because of a pre-existing medical condition that prevents the borrower from working, we note that a borrower who seeks a new loan after the final discharge of a previous loan at the end of the three-year conditional discharge period will continue to be subject to the same requirements that apply under the current regulations. That is, the borrower must provide a certification from a physician that the borrower is able to engage in substantial gainful activity, and must acknowledge in writing that the new loan cannot be discharged based on a pre-existing condition unless that condition has substantially deteriorated.

Change: None.

Comment: One commenter questioned the rationale for removing "attend school" from the definition of "totally and permanently disabled," and recommended that the current definition be retained. The commenter believed that the purpose of attending school is to receive training that will later lead to gainful employment and the ability to repay a student loan.

Discussion: As explained in the preamble to the NPRM, the requirement that an individual must be unable to attend school was removed from the definition of totally and permanently disabled because of our belief that given medical and technological advances, it is no longer meaningful to use ability to attend school as an indicator of total and permanent disability. In addition, the prohibition against attending school

could have the unintended consequence of discouraging disabled individuals from pursuing further education or training.

Change: None.

Comment: Three commenters felt that the proposed definition of "totally and permanently disabled," which provides that a borrower must be "unable to work and earn money," is not consistent with the proposed discharge eligibility criteria, which allow a borrower to receive earnings from work and still qualify for loan discharge. The commenters believed that this difference would be confusing to borrowers, and suggested that the definition of "totally and permanently disabled" be revised to indicate that a borrower must either be unable to work or, if able to work, that the borrower's earnings could not exceed 100 percent of the poverty line for a family of two during the conditional discharge period.

Discussion: We do not agree that the definition of "totally and permanently disabled" conflicts with the discharge eligibility criteria. To qualify for a conditional discharge due to total and permanent disability, a borrower must provide a certification from a physician indicating that, in the physician's best professional judgment, the borrower is unable to work and earn money because of an illness or injury that is expected to continue indefinitely or result in death. However, advances in medical treatment may result in an improvement in the borrower's condition that could not be predicted at the time of the physician's certification. In addition, changes in employment conditions may allow a borrower to return to work despite his or her condition. We do not wish to discourage disabled individuals from attempting employment. Accordingly, the regulations do not disqualify borrowers who have minimal earnings during the conditional discharge period.

On the other hand, we do not believe it is appropriate to revise the definition of "totally and permanently disabled," to include an earnings limit. First of all, such an addition would be inconsistent with the rest of the definition which refers to a borrower who cannot work and earn money. Second, as a practical matter, it would significantly complicate the process for determining if the borrower is disabled by requiring the borrower to submit income information as well as the doctor's certification as part of the initial application.

Sections 674.61, 682.402, 685.212 and 685.213 Total and Permanent Disability Discharge

Comment: Many commenters argued that the Inspector General's report discussed in the preamble to the NPRM ("Improving the Process for Forgiving Student Loans") does not provide compelling evidence that substantive changes are required to the process for granting total and permanent disability discharges. One commenter disagreed with this view, and stated that the findings of the Inspector General's report are cause for concern and legitimate reasons for the Department to take action.

The commenters who stated the view that the findings in the OIG's report do not justify the changes proposed in the NPRM suggested that we conduct a comprehensive examination of the specific accounts supporting the findings in the OIG's report before making changes to the existing process for granting total and permanent disability discharges. They believe that such an examination is necessary to establish the reason for the exceptions, to identify possible vulnerabilities in the system for granting disability discharges, and to allow us to design a tailored solution to address the problem.

Discussion: The OIG clearly found evidence of inappropriate disability discharges being awarded in the FFEL program. The OIG's conclusion that 81 individuals earned more than \$50,000 in 1997 after receiving a disability discharge between July 1, 1994 and December 31, 1996 cannot be ignored. The OIG also reported that 6,800 new loans totaling almost \$20 million were awarded to borrowers who returned to school after having loans totaling nearly \$11.5 million discharged. These findings indicate a significant problem that warrants the proposed changes.

Change: None.

Comment: Many commenters criticized the proposed regulations on the grounds that our approach to reforming the disability discharge procedures would adversely impact all eligible borrowers, rather than focusing on those borrowers who are later determined to be ineligible for a final discharge.

Several commenters objected to the proposed change because they believe it would cause undue hardship to borrowers. They contend that the complexity of the proposed disability discharge procedures would create unnecessary anxiety and confusion for disabled borrowers, particularly those afflicted with severe mental or emotional impairments.

One commenter raised concerns about the effect the proposed change would have on potential borrowers who might think twice about obtaining student loans for their future educational needs. The commenter believed that the conditional discharge approach may potentially discourage a person from pursuing higher education for fear of an inability to repay his or her loans due to medical difficulties.

Discussion: As noted in the OIG report, the discharge of student loans based on a total and permanent disability can provide a significant benefit to the borrower. At the same time, the disability discharge reflects a governmental decision to forgive thousands of dollars in debt. Disability discharges thus represent a significant cost to federal taxpayers. In these circumstances, it is clearly appropriate to have stringent criteria for discharging a loan. While the conditional discharge period may be a slight inconvenience for some borrowers, it helps to ensure that total and permanent disability discharges are only granted to borrowers whose disabilities are truly "permanent."

We disagree with the commenters' assumption that the three-year conditional discharge period will create undue anxiety for borrowers. Borrowers will be informed up front of the criteria they must meet to qualify for a disability discharge. Borrowers who continue to meet the eligibility criteria will receive a final discharge at the close of the conditional period. Moreover, borrowers suffer no negative consequences during the conditional discharge period. No collection activity or adverse credit reporting occurs during the conditional discharge period. If a borrower's situation changes during this period, we believe the borrower should be expected to repay the student loan. However, even if collection activity resumes on the loan, the borrower is not obligated to pay any interest that accrued during the conditional discharge period.

We disagree with the claim by one of the commenters that the conditional discharge approach will be particularly harmful to borrowers with severe mental or emotional impairments. As we noted in the preamble to the NPRM (65 FR at 47635), we are not aware of any other major federal program that provides disability benefits based on a one-time review of an individual's condition, and we did not receive any comments suggesting otherwise. The adoption of the policies reflected in this regulation will make the processes for discharges of student loans more comparable to that of other federal

programs to which the borrower may also be applying for benefits.

We strongly disagree with the commenter who suggested that the new regulations would somehow discourage borrowers from taking out student loans to further their education. Most borrowers, even those with some pre-existing condition, recognize the value of postsecondary education and appreciate the opportunity and access to education that student loans provide them. We do not share the commenter's apparent belief that a borrower will be dissuaded from pursuing an education based on the standard for a disability discharge.

Change: None.

Comment: Several commenters objected to the proposed change because they believe it will result in undue administrative burden on institutions and guaranty agencies. One commenter claimed that the proposed approach will not work and will result in genuinely disabled borrowers not receiving discharges to which they are entitled. The commenter also believed that the new process will require guaranty agencies and the Department to meet impossible demands for vastly increased staffing and medical and vocational expertise.

Several commenters also claimed that implementation of the proposed regulations would result in considerable expense for taxpayers and loan administrators, and questioned whether the benefits of the regulations justify the expense.

Discussion: We agree that there are many operational details that will need to be addressed before the regulations can be implemented (see the prior discussion on effective date). However, we do not believe that the regulations will create undue administrative burden on loan holders and guaranty agencies. For these participants, there will be little change from the current process of reviewing discharge requests, except that their decision to grant a total and permanent disability discharge will not be final and they will assign the loans to us.

In regard to the commenters' claim that the costs of the new process will exceed the benefits, our analysis does not support this claim. Moreover, even a small percentage of borrowers who were ineligible for loan discharge calls the integrity of the loan discharge process into question and may threaten public support for the title IV student loan programs.

Change: None.

Comment: Overall, the commenters claimed that the proposed rule will be difficult to comprehend, difficult to

administer, difficult to explain to students, and that setting up new bureaucratic systems is not the answer. However, two commenters agreed in general with the key provisions of the proposed regulations.

Many commenters recommended that we withdraw the proposed regulations.

A couple of commenters stated that the proposed regulations are unnecessary because it is feasible to identify abusers by cross-referencing tax information with discharge information and to reverse a discharge granted to an ineligible borrower.

Some commenters questioned whether we have the legal authority to impose a conditional discharge on borrowers, since a conditional discharge is not specifically mentioned in the statute.

Discussion: The proposed regulations were discussed during an extensive negotiated rulemaking process and were subject to the opportunity for public comment. The comments we received and which are discussed in this preamble have raised a number of issues. We have responded to those issues in this document and, where appropriate, have made changes to the regulations. We believe that this final regulation creates a workable process that will result in fair treatment for borrowers and taxpayers.

We also disagree with the commenters who suggested that the regulations are unnecessary because we already have the ability to revoke discharges. Generally, a final agency decision cannot be changed based on events occurring after the decision. Accordingly, we believe that it is unlikely that loan discharges for borrowers who met the eligibility criteria could be easily reinstated and legally enforced at a later date.

Change: None.

Comment: Several commenters recommended that we develop an operational guide for the new policy and allow interested organizations to review the guide. They believe that such a major change in policy will require careful coordination between the various entities that administer the title IV student loan programs and that operational details must be carefully considered and documented.

Discussion: We agree with the commenters and intend to work with representatives of schools, lenders, servicers, guarantors and borrowers to develop appropriate written guidance to implement the regulations.

Change: None.

Comment: Several commenters offered alternative solutions to those proposed in the NPRM. Some

recommended that we reconsider the proposal made by the non-federal negotiators during the negotiated rulemaking process. Under that proposal, a borrower would receive a disability discharge after consideration of the initial application. However, the borrower would also be notified that if certain events occur (receipt of an additional title IV loan or significant earnings) during a specified time period following the discharge, the discharge would be revoked.

One commenter pointed out that reinstatement of loans in cases where a borrower has requested another title IV loan subsequent to a disability discharge has been a workable element of the title IV program in the past. In addition, the Department has routinely reinstated nonconditionally discharged loans in cases where the determination of discharge eligibility was based on incorrect or changing information, as is often the case with closed school revisions.

One commenter recommended that we rely on State or Federal agencies, such as the Social Security Administration, that are specifically charged by law with making disability determinations. The commenter believes that these agencies are far more capable of making fair, uniform, and reliable disability determinations than loan holders or guaranty agencies. The commenter believes that placing disability discharge determinations in the hands of a knowledgeable third party is the best way to ensure the integrity and fairness of all such determinations.

One commenter recommended that we turn over verified fraudulent disability claims to the U.S. Attorney's Office for possible prosecution. The commenter believes that if it became known that the Department vigorously pursues fraud, it would deter physicians from falsely certifying disability request forms.

One commenter recommended that we require lenders to offer credit insurance to student loan borrowers at reasonable rates. This insurance would repay the full loan in cases of authentic total and permanent disability that can be quickly and fairly verified. Borrowers who accept the credit insurance could be given reduced interest points as an incentive.

Another commenter suggested that Perkins Loan holders be allowed to continue to make disability determinations, which would be reviewed as part of the annual audit. In cases where the auditors question the holder's judgment, we would disallow the discharge, and the loan holder

would be required to reimburse the Perkins loan fund. The commenter believed that this approach would eliminate approvals based on insufficient evidence.

Two commenters recommended that we reinstate the deferment for temporary total disability. By doing so, borrowers would receive the relief they need, and lenders and schools would have the ability to determine, based on the physicians' certification, if the disability is total and permanent at the end of an appropriate period of time. Loan holders could also monitor the status of the borrower during the deferment period for signs of substantial gainful employment.

Discussion: Although we have reinstated discharged loans in the past due to fraud or based on inaccurate information submitted by the borrower, inappropriate disability discharges are not necessarily fraudulent. The new regulations recognize that a borrower's medical condition is not static and could improve after the borrower received a disability discharge. Similarly, changes in employment technologies and opportunities could allow a disabled individual to return to work. We do not believe that it is appropriate to discharge the obligation to repay thousands of dollars of loans based on a one-time review of the borrower's medical condition. The commenters did not cite any other disability benefit program that relies on such a limited amount of evidence to support the disability determination.

We have explored the option of relying on determinations by other agencies, such as the Social Security Administration (SSA). We have found that most of these agencies have disability criteria that are less stringent than ours because they provide disability payments or benefits based on the borrower's continuing disability. If an individual's condition improves, the agency stops providing the benefits. We believe that with a discharge—a one-time cancellation of a borrower's obligation to repay a debt of thousands of dollars—there is a need to use a higher standard. As a result, we have decided against using SSA disability determinations. See "Use of Social Security Disability Documentation" for a further discussion of this issue.

We also do not believe that reviews of disability determinations with annual audits would be practical. Auditors do not have the expertise to make judgments about a holder's determination in disability cases. We believe that the centralized process provided in the regulations provides for

a more consistent review of disability discharge approvals.

We believe that the commenter's suggestion that we require lenders to offer credit insurance would only increase costs to all student loan borrowers and would not address the problem of providing the discharge to ineligible borrowers. Moreover, this proposal and the proposal to reinstate the temporary total disability deferment for all borrowers, would require statutory changes.

Change: None.

Sections 674.61(b)(3)(ii), 682.402(c)(2)(ii), and 685.213(b)(2) Use of Social Security Administration Disability Documentation

Comment: Many commenters expressed concern that the proposed regulations did not provide specific guidelines on the type of SSA documentation that a borrower could provide as an alternative to a physician's certification. The commenters suggested that the lack of guidelines on what type of documentation is acceptable would result in significant borrower confusion and increase the administrative burden for loan holders in this process. The commenters strongly recommended that the final regulations include explicit and clearly defined guidelines for determining the type of SSA documentation that could be used as an alternative to a physician's certification. Many of the commenters stated that if it was not possible to incorporate such guidelines in the final regulations, all references to the use of SSA documentation should be removed.

One commenter supported the concept of using SSA documentation as an alternative to a physician's certification only if it were allowed to be used in all cases. The commenter felt that, if it were not allowed in all cases, it would be too difficult to explain to borrowers when SSA documentation would be acceptable, and when it would not.

One commenter believed that using SSA documentation to establish that a borrower is totally and permanently disabled would be the most sensible approach, and expressed hopes that we would be able to implement this approach. Another commenter noted that the ability to accept a SSA disability determination as an alternative to a physician's certification would reduce administrative burden. However, the commenter has seen SSA disability documentation and was concerned that the SSA's eligibility requirements are not as stringent as the current requirements for discharging

student loans based on total and permanent disability.

One commenter, representing organizations that specialize in consumer issues, believed that the language of the preamble to the proposed regulations might suggest to some readers that any disability determination from the SSA would be sufficient to establish a borrower's eligibility for a total and permanent disability discharge of a title IV loan. However, the commenter believed that our intent is to allow the use of SSA documentation only for individuals whom the SSA has placed in the highest of three continuing disability review categories, "medical improvement not expected." The commenter felt that this approach would benefit very few borrowers, since the "medical improvement not expected" category consists of individuals with serious conditions that are usually progressive and possibly fatal and who would probably have no trouble obtaining a physician's certification for a discharge. The commenter believed that we should go further and use the SSA's continuing disability review categories, as a basis for determining which borrower's discharges to review for possible revocation within a limited time period. The commenter felt that borrowers should be able to submit documentation of any SSA disability benefits award as sufficient evidence to warrant a disability discharge.

Discussion: We agree with the many commenters who felt that the lack of specific guidelines on acceptable SSA documentation could cause confusion for borrowers and loan holders. As explained in the preamble to the proposed regulations, the standard that an individual must meet to qualify for SSA disability benefits is not the same as the total and permanent disability standard that applies in the title IV loan programs. Many individuals who receive disability benefits from the SSA would not be considered totally and permanently disabled under the title IV definition. For this reason, we concluded that it would not be appropriate to accept SSA documentation as an alternative to a physician's certification in all cases.

In the preamble to the NPRM we indicated that we would work with SSA to determine whether there is documentation that the SSA provides to some individuals that would be comparable to a physician's certification that a borrower is totally and permanently disabled according to our definition. After extensive discussion and examination, however, we have determined that there is no

documentation currently issued by SSA that would effectively establish that a borrower is totally and permanently disabled under the title IV standard.

Change: We have revised the regulations by removing all references to the use of SSA documentation as an alternative to a physician's certification.

Sections 674.61(b)(3)–(6), 682.402(C)(2)–(12), and 685.213(b) Initial Determination of Total and Permanent Disability

Comment: One commenter questioned the ability of loan holders and guaranty agencies to make medical determinations regarding a borrower's disability status. The commenter expressed the view that it is not possible, even for a medically trained reviewer, to determine, merely by reading a physician's certification, whether a borrower is disabled. Another commenter questioned whether we would be able to make valid determinations of a borrower's disability without having full access to the borrower's entire medical history. The commenter also expressed concern that our disability determinations under the new process will be arbitrary and inconsistent.

Discussion: The regulations do not change the role of loan holders and guarantors in reviewing the basis for a borrower's disability discharge claims. Loan holders have always had the authority to request additional information or retain medical advice in evaluating disability discharge requests. We believe that the added step of assigning approved disability discharge claims to us for a second review will ensure a comprehensive evaluation of the disability request. We plan to request any additional information and expertise necessary to ensure such a review.

We believe that the new procedures will improve the consistency of decisions on disability discharge claims. Under the new process, we will be able to develop standards and procedures for reviewing such claims and to communicate those standards to the loan holders and guaranty agencies.

Change: None.

Comment: One commenter recommended identifying specific medical records that a borrower must provide to support a disability claim. The commenter stated that, in many cases, physicians charge for providing copies of records and letters, and a specific list of documents would prevent a borrower from incurring extra costs by obtaining unnecessary records.

Discussion: We believe loan holders should not be restricted as to the type

of additional medical documentation they can request in order to make a disability determination. We believe that the types of documentation required may differ depending on the circumstances and that it is neither possible nor useful to attempt to provide such a list.

Change: None.

Comment: A large number of commenters approved of our proposal that we assume responsibility for servicing loans after the loan holder or guarantor has assigned to us a loan on which the loan holder or guarantor has approved a disability discharge claim. These commenters agreed that once the loan is assigned to us for determination of eligibility for a conditional discharge, regardless of the determination made, the loan should remain with us.

Discussion: We appreciate the commenters' support for this provision of the regulations.

Change: None.

Comment: One commenter felt that disabled borrowers with multiple loans should not be forced to submit separate disability discharge claims to each loan holder. This commenter pointed out that, for other title IV loan discharges, there exists a cross-program documentation policy that allows the appropriate program participant to discharge a loan based on the comparable discharge of another title IV loan. The commenter suggested that we should adopt a similar policy and authorize schools and guaranty agencies to discharge a borrower's loan without requiring additional documentation if another of the same borrower's loans has been discharged due to a disability.

Discussion: In some instances the eligibility for discharge relies in part on when the individual loan was made and on the borrower's condition at that time. Therefore, we believe that the preliminary determination of whether a borrower qualifies for a disability discharge should be made by the holder of the loan (Secretary, school, lender, guaranty agency).

Change: None.

Comment: One commenter requested clarification on the status of a loan that is delinquent or in default at the time it is placed into a conditional discharge status. The regulations state that the borrower is not considered delinquent or in default on the loan during the conditional discharge period.

Discussion: We agree that the regulatory language should be clarified. During the conditional discharge period, the loan retains the status that it was in at the time the conditional discharge was granted. If a loan was current at the time of the conditional discharge, it will

remain current and not be considered delinquent or in default during the conditional discharge period. If the loan was delinquent or in default at the time the conditional discharge was granted, it will remain delinquent or in default during the conditional discharge period.

Change: We have revised §§ 674.61(b)(7)(ii), 682.402(c)(14)(ii), and 685.213(d)(2) to clarify that a borrower is not considered delinquent on a loan during the conditional discharge period, unless the loan was delinquent or in default at the time of the conditional discharge.

Comment: One commenter recommended that we explain the process that a guarantor must follow if the guarantor is the holder of the loan at the time the borrower requests a total and permanent discharge.

Discussion: The process is the same as described in the regulations, except that the borrower applies directly to the guaranty agency for the discharge, rather than to the lender. We do not believe it is necessary to specifically describe this process in the regulations.

Change: None.

Comment: Several commenters suggested that we work with the student loan community to develop a standardized application form and physician's certification for total and permanent disability discharges. Commenters believed that a standardized form would reduce confusion for physicians and loan holders. One commenter recommended that the standardized form include a specific definition of "permanent and total disability" to clarify any ambiguity or misconceptions a physician might have.

Discussion: We agree with the commenters and will work with the student aid community to develop revised total and permanent disability forms. We are interested in the suggestion that a single standardized discharge application form be developed for use in all three of the title IV student loan programs.

Change: None.

Comment: One commenter recommended that during the time required for the medical reviews of the disability claim, borrowers should be granted an automatic forbearance on payments. This would eliminate the need to require return of payments made on the loan after the onset of the disability at the end of the conditional discharge period.

Discussion: The regulations provide for a suspension of payments after the borrower submits the physician's certification, or the letter from a physician requesting additional time to

make a certification. We believe that this will serve the same purpose as a forbearance.

Change: None.

Comment: Several commenters recommended that §§ 674.61(b)(5) and 682.402(c)(11), be revised by replacing “due and payable” with “due and payable to the Secretary” to clearly advise the borrower that, despite the disability denial, the Secretary retains ownership of the loan.

One commenter proposed additional language: “The notice must identify the address where payments are to be sent.”

Discussion: We do not believe that it is necessary to include this level of operational detail in the regulation.

Changes: None

Comment: Several commenters recommended that §§ 674.61(b)(4) and 682.402(c)(8) be revised to make the Department responsible for informing the borrower of the borrower’s rights and responsibilities, as well as who the borrower should contact in the future.

Discussion: We disagree. The first notification to a borrower that his or her loan has been assigned to us comes from the lender for FFEL or from the school for Perkins. At that point, the borrower will want to know the next steps for being granted a disability discharge. We believe that the lender or school that already has been in contact with the borrower concerning the discharge request should provide specific, detailed information about the disability discharge process with the notification of assignment.

Change: None.

Comment: Several commenters recommended that we revise § 682.402(c)(3) to provide for a 60-day suspension of collection activities upon notification by the borrower that the borrower claims to be totally and permanently disabled, or upon receipt of a physician’s letter to request additional time to determine if the borrower is totally and permanently disabled.

Discussion: The regulations provide for a suspension of collection activity after receipt of the physician’s certification or letter. We do not believe that there should be a suspension of collection activity for the period when the borrower is obtaining the documentation needed to support the claim of a total and permanent disability. However, if the lender believes that the borrower’s circumstances warrant a period of forbearance, while the borrower is obtaining supporting documentation, the lender is free to grant such a forbearance.

Change: None.

Comment: Several commenters recommended that we revise §§ 682.402(c)(4)(i) and (ii) and 682.402(c)(6)(i) and (ii) to say that the lender or guaranty agency has determined that the documentation “appears” to support the borrower’s claim. The commenters suggested that this language is needed because, while the lender or guaranty agency may believe, based on its own expertise and review criteria, that the documentation supports a discharge, we will make the actual determination to grant the conditional discharge.

Discussion: We disagree with this recommendation. Loan holders and guarantors are required to thoroughly review the applications and make determinations of eligibility for disability discharges based upon the application and any supporting medical documentation. Adding the word “appears” undercuts the sense that lenders and guaranty agencies are responsible for making appropriate decisions.

Change: None.

Comment: Several commenters recommended that in § 682.402(c)(5) we replace “* * * from the date the lender received the physician’s letter requesting additional time * * *” with “* * * from the date collection activity was suspended * * *” These commenters suggested that this language was needed to cover all situations in which collection may have been suspended, not just for situations in which a physician has requested additional time.

Discussion: We agree with the commenters.

Change: We have revised § 682.405(c)(5) to specify that the forbearance period begins from the date collection activity was suspended.

Comment: Several commenters requested that we add a sentence to § 682.402(c)(7) authorizing the lender to grant forbearance for the period during which collection activities were not performed in cases when the guaranty agency does not pay a disability claim and returns the claim to the lender.

Discussion: We agree with the commenters’ recommendation.

Change: We have revised § 682.402(c)(7) to authorize forbearance as requested in the comments.

Comment: Several commenters recommended that we revise § 682.402(c)(10) as follows: “The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim. Upon assignment of a loan to the Secretary under this section, the Secretary assumes all obligations, responsibilities,

and liabilities associated with that loan.” The commenter suggested that this language should replace the cross-reference to § 682.409 in the proposed regulation, which addresses subrogation rules that are not applicable to disability discharges. The commenter recommended that assignment of a loan for determination of eligibility for a conditional discharge should occur immediately after claim payment to the lender by the guaranty agency rather than waiting for the payment of reinsurance so that we may immediately evaluate the borrower’s request for a disability discharge.

Discussion: We agree that the assignment of these accounts should take place immediately after the agency’s determination and notice to the borrower. However, we do not agree that the regulations need to specify the Secretary’s responsibilities in this process.

Change: We have revised § 682.409(c)(10), which we have renumbered as § 682.409(c)(11), to direct the guaranty agency to assign disability accounts to us immediately following the agency’s payment of a lender’s claim.

Comment: Several commenters requested that we add a sentence to § 682.402(c)(12) specifying the contents of the notice the Secretary sends to the borrower. Paragraphs (c)(12) and (c)(16) both provide guidance regarding the Secretary’s notification to a borrower. They recommended that we merge the information in (c)(16) with the information in (c)(12) to more clearly state in one paragraph the information provided when the borrower is notified that the loan is conditionally discharged.

Discussion: We agree with this change.

Change: We have revised § 682.402(c)(12), which we have renumbered as § 682.409(c)(13), in accordance with the commenter’s suggestion.

Comment: One commenter representing doctors of podiatric medicine noted that the SSA recently amended its regulations by adding licensed podiatrists as acceptable medical sources for establishing medical impairments of the foot, or foot and ankle. Given this development, the commenter requested that we change the definition of “totally and permanently disabled” to allow doctors of podiatric medicine, within their scope of practice as defined by State law, to certify that a borrower is totally and permanently disabled for the purpose of a loan discharge.

Discussion: Our long-standing policy has been that the only physicians authorized to certify that a borrower is totally and permanently disabled for the purpose of a loan discharge are doctors of medicine or osteopathy. In light of the other significant changes we are making to the process for evaluating requests for discharges on total and permanent disability we are not willing, at this time, to consider an expansion of the categories of medical professionals who can certify a borrower's request for a discharge. However, we will monitor the types of disabilities that lead to requests for a discharge and may decide to revise the regulations to increase the categories of medical professionals in the future. Of course, a doctor of podiatric medicine who meets State law requirements as a doctor of medicine may certify the borrower's application.

Change: None.

Sections 674.61(b)(1), (b)(6), and (b)(7), 682.402(c)(1), (c)(12), and (c)(13), and 685.213(a)(1) and (d) Conditional Discharge

Comment: Many commenters recommended that we revise §§ 674.61(b)(1), 674.61(b)(6), 682.402(c)(1)(i) by using the term, "from the date the physician determined the borrower to be totally and permanently disabled" instead of "onset of the disability." The commenters pointed out that the onset date of the disability is not the date on which the discharge is based, rather it is the date the physician determines the borrower is totally and permanently disabled. In many cases, the onset of the disability could occur many years in the past. Therefore, the begin date of the conditional period should be clarified as the date the borrower became totally and permanently disabled.

Discussion: We agree that the three-year conditional discharge period should begin on the date the borrower became totally and permanently disabled as certified by a physician. However, the language suggested by the commenters could be interpreted to mean that the conditional discharge period begins on the date of the doctor's certification. We have revised the regulations to clarify that the conditional discharge period begins on the date that the borrower became totally and permanently disabled.

Change: We have revised the language as stated.

Comment: Several commenters recommended that we reduce the length of the conditional period from three years to two years. Another commenter suggested that the three years is too short. Another suggested that we

conduct additional research to determine if three years is an appropriate length of time. One commenter requested that we clarify whether our use of the term "up to three years" means that we would grant conditional discharges for shorter periods.

Discussion: We believe that three years is an appropriate length of time for the conditional discharge period. The term "up to three years" is intended to make it clear that we can terminate a conditional discharge at any time, if we become aware that a borrower no longer meets the eligibility criteria for a discharge. We do not intend to grant conditional discharges for shorter time periods than three years.

Change: None.

Comment: One commenter noted that if the total and permanent disability onset date is more than three years prior to the disability review, the borrower would have already exhausted the conditional discharge period and our final determination on the borrower's discharge application would be based on data with regard to the borrower's income in the past. The commenter suggested that we change the regulations to reflect this fact.

Discussion: The conditional discharge period begins on the date the borrower became totally and permanently disabled. The commenter is correct in noting that in some cases three years could have already elapsed before a borrower applies for a disability discharge. In those cases, determination of eligibility for a final discharge would be based on data from the prior three years and would be made immediately upon assignment of the account to us.

Change: The regulations have been changed to clarify that some or all of the three-year conditional period could occur before the initial determination of eligibility for discharge.

Sections 674.61(b)(2), (8), and (9), 682.402(c)(14) and (15), and 685.213(a)(2) and (c) Final Determination of Total and Permanent Disability

Comment: Some commenters argued that a borrower should be able to have annual earnings above the poverty line for a family of two without losing eligibility for a final disability discharge. These commenters argued that the income limit is too low, and is not a fair measure of a borrower's eligibility for a disability discharge. One commenter suggested using 150 percent of the poverty line. Other commenters felt that the poverty line was an adequate measurement.

Discussion: We disagree that the maximum earnings level in the proposed regulations is too low. By definition, a borrower who is totally and permanently disabled is unable to work and earn money. The regulations allow a borrower to work and earn a modest amount so that borrowers are not discouraged from attempting to return to work during the conditional discharge period. We believe that any earnings above a very modest amount indicate that a borrower is able to work and earn money, and should disqualify the borrower from receiving a final discharge of his or her loan.

Change: None.

Comment: Several commenters objected to the provision in the regulations that denies a borrower a final discharge if the borrower takes out a title IV loan during the conditional discharge period. They felt this was unfair, because a borrower who returns to school without taking out additional title IV loans would continue to qualify for a final discharge.

Discussion: A borrower whose loan has been conditionally discharged due to total and permanent disability cannot receive another title IV loan unless a physician certifies that the borrower is capable of substantial gainful activity. A borrower who is capable of substantial gainful activity is able to work and earn money. In addition, a borrower who takes out a new loan agrees to pay it back, which means that the borrower expects to have earnings. We believe that such a borrower does not qualify for a discharge.

Change: None.

Comment: Several commenters had concerns about how we will verify a borrower's income for purposes of determining the borrower's ultimate qualification for a discharge. One commenter pointed out that commonly used measuring devices such as tax returns and W-2 forms measure income on a calendar-year basis. This commenter noted that using calendar year income may put a borrower claiming disability at the beginning of the year at a disadvantage compared to a borrower claiming disability at the end of the year. Several commenters recommended that we not use calendar year income to measure a borrower's earnings. Instead, they recommended that we use income over a 12-month period.

Some commenters recommended that we measure income on a calendar-year basis because attempting to measure income over a period not in common usage might lead to a lack of clarity and consistency.

Discussion: We agree that the income measurement should be based on three 12-month periods starting on the date the borrower became totally and permanently disabled. However, we do not agree that the term "annual income" in the regulation limits us to measuring income on a calendar-year basis.

Change: None.

Comment: One commenter recommended that we require borrowers to notify us if the borrower earns money above the income limits after a final disability discharge has been granted. The commenter noted that advances in medical technology may ease a disability previously deemed total and permanent.

Discussion: As with the current regulations, a borrower is not obligated to make payments on a discharged loan, even if the borrower's medical status improves. We believe that the three-year conditional discharge period is an adequate length of time to determine if a borrower's medical condition will improve sufficiently to no longer meet the criteria for a total and permanent disability discharge. Once the borrower meets all of the criteria for a final discharge of his or her loan, the borrower should not be required to continue reporting on his or her status to us.

Change: None.

Comment: Several commenters recommended that we revise § 682.402(c)(1)(ii)(B) to provide an exception for consolidation loans. The commenters believe that a borrower who consolidates loans that have not been conditionally discharged should not be precluded from having the conditionally discharged loans discharged at the end of the conditional discharge period.

Discussion: We agree, as long as the borrower is not including a conditionally discharged loan in the consolidation loan.

Change: We have revised §§ 674.61(b)(2)(ii), 682.402(c)(1)(ii)(B), and 685.213(c)(2) to provide an exception for consolidation loans. We have also clarified that a borrower may not consolidate a loan while it is in a conditional discharge period.

Comment: One commenter recommended that we add a new paragraph to § 682.402(c)(1)(ii) stating that a borrower is not considered disabled if the borrower was "otherwise determined not to be totally and permanently disabled" by the Secretary. The commenter cites language in the preamble to the proposed regulations indicating that the Secretary might refuse a final discharge based on other criteria not specified in the regulations.

Discussion: The language in the preamble was intended to account for incidents of fraud, and was not meant to suggest that we would deny the discharge of a loan based on criteria other than what is specified in the regulations. However, it is not necessary to restate in this section of the regulations our authority to revoke a discharge due to fraud.

Change: None.

Comment: Several commenters recommended that we revise § 682.402(c)(1)(iii) as follows: "Except as provided in paragraph (c)(1)(iv)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the loan was made unless the borrower's condition substantially deteriorated * * *" The revision is consistent with proposed regulations in which the borrower's disability date is compared to the date the loan is made, rather than the date the borrower applied for the loan.

Discussion: We agree with the commenters' recommendation.

Changes: We have revised § 682.402(c)(1)(iii) in accordance with the commenters' recommendation. We have also made corresponding changes in § 685.213(a)(4) of the Direct Loan regulations. There is no need to make a change to the Perkins regulations.

Sections 674.61(b)(11) and (12), 682.402(r)(2) and (3), 685.212(g)(2) Payments Received After the Onset of the Disabling Condition

Comments: Several commenters recommended that we revise §§ 674.61(b)(12) and 682.402(r)(3) by deleting "100 percent of" and replacing "* * * any payments received, directly or indirectly, from or on behalf of the borrower" with "* * * any payments received on the loan after the date the borrower became totally and permanently disabled." The commenters believed that this language clarified that when the final discharge is granted, only those payments made after the date the borrower became totally and permanently disabled should be returned.

Discussion: We agree.

Changes: We have revised §§ 674.61(b)(12) and 682.402(r)(3) in accordance with the commenter's suggestion.

Comment: Several commenters recommended that we revise § 674.61(b)(1) by adding the following sentence: "The institution shall not refund a repayment made during a period for which the borrower qualified for a total and permanent disability discharge unless the borrower made a

payment due to an institutional error." These commenters recommend that only those payments made after the date the institution approved the preliminary disability discharge should be returned after the final discharge is granted.

Discussion: In many cases a borrower will make payments between the time he or she became totally and permanently disabled, and the time the conditional discharge was granted. Borrowers do not always apply for a discharge immediately after becoming totally and permanently disabled. It would be unfair to penalize a borrower for keeping current on his or her payments prior to applying for a discharge. We also believe the handling of payments received from disabled borrowers should be consistent across the three title IV student loan programs.

Changes: None.

Comment: Several commenters recommended that we revise §§ 674.61(b)(11) and 682.402(r)(2) by deleting the language which requires the institution or the guaranty agency to notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged. These commenters pointed out that the institution or guaranty agency will not know the borrower's loan status after the loan has been assigned to us. Without this information, the institution's notification to the borrower may be confusing or inaccurate. The notification could be contradictory if we had removed the loan from a conditional discharge status and placed it into repayment.

Discussion: Both §§ 674.61(b)(11) (which has been renumbered § 674.61(b)(10)) and 682.402(r)(2) specify that the notice must tell borrowers not to make payments "unless the Secretary directs the borrower otherwise." We believe that loan holders and GAs should make it clear in their notices that we may instruct the borrower to resume making payments.

Change: None.

Comment: Several commenters recommended that we revise §§ 674.61(b)(12) and 682.402(r)(3) by replacing "sender" with "borrower" or "borrower's representative." They noted that it is not easy to determine who may have sent a payment on an account, especially up to three years after the fact. The sender may be a lender or GA that is forwarding the payment to us. Lenders and GAs may be required to process a payment received from a borrower and forward their own cashier's check to us to create an audit trail of payments received.

Discussion: Other provisions of the regulations refer to “sender” not “borrower.” The regulations retain the word “sender” to maintain consistency.

Change: None.

Comment: Several commenters objected to the provisions in §§ 674.61(b)(12) and 682.402(r)(3) which provide for keeping payments for a three-year period. They recommend refunding payments made by the borrower after the onset of the disability at the time of our determination of the borrower’s eligibility for conditional discharge, not at the end of the conditional discharge period three years later.

Discussion: Until the discharge is finalized, collection activity may resume on the loan. As a result, we feel that it sends the wrong signal to borrowers to return payments prior to the final discharge. In order to avoid prematurely giving borrowers the impression that their loan has been discharged, we will wait until the final discharge before refunding payments.

Change: None.

Comment: Several commenters recommended revising § 682.402(c)(13)(i) to read “Is not required to make payments on the loan.” The paragraph states that a borrower is not required to make payments from the date the Secretary makes the conditional discharge determination. However, the suspension of collection activities actually begins earlier (upon receipt of the documentation identified in § 682.402(c)(3)).

Discussion: We agree that the language in § 682.402(c)(13)(i) is unnecessary and possibly confusing.

Change: We have revised § 682.402(c)(13)(i) (which has been renumbered as § 682.402(c)(14)(i)) to clarify that payments need not be made from the date of suspension of collection activities.

Comment: Several commenters recommend revising § 682.402(c) by adding a new paragraph (c)(9) as follows: “After receiving a claim payment from the guaranty agency, the lender shall forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.” The commenters noted that paragraph (c) does not address the disposition of borrower payments received by the lender after the date of total and permanent disability.

Discussion: We agree.

Change: We have revised § 682.402(c) in accordance with the commenter’s suggestion.

Sections 674.9, 682.201, and 685.200 Borrower Eligibility for Title IV Loans

Comment: Section 682.201(a)(5) provides that a borrower who has a loan in a conditional discharge status is not eligible to receive a new title IV loan until the suspension of collection activity has been lifted on the conditionally discharged loan. Many commenters suggested that this requirement would cause unnecessary delays in loan processing, since a school, lender, or guaranty agency generally may not know if collection activity has resumed on a conditionally discharged loan. The commenters suggested that resumption of collection activity should be included in the regulations only as a consequence of receiving a new loan during the conditional discharge period, rather than as a condition of eligibility for a new loan. Other commenters recommended that § 682.201(a)(5) be replaced by a new provision requiring, as a condition of eligibility for a new loan, that a borrower sign a statement acknowledging that collection activity will resume on any conditionally discharged loan.

Discussion: A borrower who receives a new title IV loan while a previous loan is in a conditional discharge period is no longer considered to be totally and permanently disabled, and therefore is responsible for repaying the conditionally discharged loan. To emphasize the importance of this repayment obligation, we believe that collection activity must resume on a conditionally discharged loan before the borrower receives a new loan, as opposed to simply having the borrower acknowledge that collection activity will resume. The means by which a school, lender, or guaranty agency will know that collection activity has resumed is an operational issue that will be addressed as we implement the new regulations.

While we do not agree that § 682.201(a)(5) should be removed, we do support the commenters’ suggestion that a borrower be required to acknowledge in writing that collection activity will resume on any conditionally discharged loan.

Change: Sections 674.9(i), 682.201(a)(7), and 685.200(a)(1)(iv)(C) have been amended to include a provision requiring a borrower to sign a statement acknowledging that he or she understands that collection activity will resume on a conditionally discharged loan if the borrower applies for a new loan.

Sections 674.5, 674.9, 674.51, and 674.61 Federal Perkins Loan Program

Comment: Several commenters stated that defaulted borrowers whose Perkins loans have been conditionally discharged should not be included in the institution’s cohort default rate for Perkins Loans. They recommended that we amend § 674.5(c)(3)(ii) by adding the following subsection: “(E) Assigned to and conditionally discharge by the Secretary in accordance with Section 674.61(b).”

Discussion: We agree with the commenters.

Change: Section 674.5(c)(3)(ii) has been revised to specify that defaulted Perkins Loans assigned to and conditionally discharged by the Secretary are excluded from an institution’s Perkins Loan cohort default rate.

Comment: Several commenters recommended that for the Perkins Loan Program we use the term “cancelled” rather than discharged in § 674.61(b)(1). Under the current Perkins Loan regulations, a borrower’s loan may be “cancelled” due to his or her disability and the commenters preferred to retain this language. The commenters argued that the amount of the discharge is recorded as a cancellation on the institution’s general ledger and on the FISAP, and that a change in the term would require institutions to make changes to their accounting records and may cause confusion on the FISAP.

Discussion: As reflected in these regulations, the standard for and treatment of loans made to borrowers who become totally and permanently disabled is consistent across the Perkins Loan, FFEL and Direct Loan programs. To avoid confusion among borrowers and others, we believe that the language across all of the title IV loan programs should be consistent. The term “discharge” is more widely used and we will use that term for all three programs. We will revise the FISAP to reflect the change in terminology as soon as practicable. We do not believe that this change in terminology should cause any significant changes in a school’s accounting records since the effect of the discharge does not change.

Change: None.

Comment: Several commenters recommended that the proposed regulations not apply to the Perkins Loan Program because the OIG’s report was based on a review of FFEL program loans and there is no evidence of similar abuse in the Perkins Loan Program. The commenters noted that schools participating in the Perkins Loan Program already have a powerful

financial incentive to prevent inappropriate disability discharges. Unlike lenders and GAs in FFEL, schools which make Perkins Loans are not reimbursed for loans cancelled due to total and permanent disability.

One commenter reported that currently even the largest colleges and universities receive only a handful of disability claims a year and that the Perkins Loan Program has not experienced the same increase in disability claims as the FFEL program in recent years.

Another commenter indicated that they, in fact, expect the number of applicants for disability discharges in the Perkins Loan Program to increase under the new rule. The commenter believes that borrowers will dispute school denial of discharges and force schools to assign the account to the Department.

Many commenters from schools in the Perkins Loan Program also expressed concern that the proposed regulations will compromise their ability to interact with disabled students and their families in a flexible manner.

Discussion: We believe that since many students receive assistance from both the Perkins Loan and either FFEL or Direct Loans and the same disabled borrower is likely to apply for discharge of all of his or her loans, the problems uncovered in the FFEL program are likely to exist in the Perkins and Direct Loan Programs. We also believe that since the Perkins Loan Program use the same definition of totally and permanently disabled and the same disability discharge process as the FFEL and Direct Loan Programs, any changes to the process must apply to the Perkins Loan Program to ensure that borrowers in all of the title IV loan programs are treated fairly.

We disagree with the commenter who speculated that the regulations will increase the number of Perkins Loan disability discharges. Schools will still have the responsibility to review disability discharge requests and the supporting documentation and will have the same financial incentives to prevent inappropriate disability discharges. Except for the assignment requirement, the regulations will not require any changes to a school's current process for reviewing and approving or denying disability discharge requests. Therefore, we do not believe that the regulations will prevent schools from interacting with students in a flexible manner.

Change: None.

Comment: Several commenters had raised issues relating to the assignment process for Perkins Loans on which a

borrower requests a discharge. Several commenters noted that the requirement in § 674.61(b)(3) that a Perkins loan approved for a disability discharge be assigned to us conflicts with the current assignment regulations in § 674.50, which allow an institution to submit only a defaulted loan for assignment. They also pointed out that § 674.50(e)(4) provides that the Secretary will not accept assignment of a loan where the borrower "has filed for or been granted cancellation due to permanent and total disability."

Some commenters agreed with our proposal to require a school to assign Perkins loans to us after it approves the borrower's disability claim. Other commenters argued that the loan should stay with the institution. One commenter recommended that we reimburse the institution for the loan. Another suggested that we return the loan to the institution if we deny the disability claim.

Other commenters were concerned that a loan assigned to us would be subject to an initial review and could be rejected. They recommended that § 674.61(b)(3) be revised to require the school to "* * * automatically and irrevocably assign the loan to the Secretary * * *"

Several commenters recommended that the assignment process for these loans should be simplified. The current assignment process is voluntary. They argued that it is not appropriate to require mandatory assignment of accounts on which the borrower has requested a disability discharge. They recommended that a special assignment process be developed for disability discharges.

Discussion: We agree that the reference to § 674.50 mentioned by the commenters is inaccurate. We do not agree with the suggestion that the addition of the phrase "automatically and irrevocably" to § 674.61(b)(3) is necessary but plan to work with the schools that participate in the Perkins Loan Program to develop a simplified assignment process for disability accounts.

Change: We have removed the reference to § 674.50.

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. Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain any burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

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.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 47639). Based on the expectation that all provisions would be effective July 1, 2001, we estimated a savings of \$72 million over FY 2001–2005 as a result of borrowers who would have received a discharge losing eligibility during the three-year conditional period. The final regulations include a one-year delay in implementing the conditional discharge provisions for total and permanent disability. Therefore, under the final regulations the Department estimates a revised savings of \$59 million over FY 2001–2005.

Paperwork Reduction Act of 1995

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

Assessment of Educational Impact

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

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

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 674, 682, and 685

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

Dated: October 25, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421-429, unless otherwise noted.

2. Section 674.5 is amended by removing “or” at the end of paragraph (c)(3)(i)(D); removing the period at the end of paragraph (c)(3)(i)(E) and adding in its place “; or” and adding a new paragraph (c)(3)(ii)(F) to read as follows:

§ 674.5 Federal Perkins Loan Program cohort default rate and penalties.

* * * * *

- (c) * * *
- (3) * * *
- (ii) * * *

(F) Assigned to the Secretary in accordance with § 674.61(b).

3. Section 674.9 is amended by:

- A. Removing the period at the end of paragraph (h)(2) and adding in its place “; and”.
- B. Adding a new paragraph (h)(3).
- C. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l), respectively.
- D. Adding a new paragraph (i).
- E. Adding a new paragraph (j).

The additions and revisions read as follows:

§ 674.9 Student eligibility.

* * * * *

(h)(3) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of (h)(1) and (h)(2) of this section. If the borrower receives another loan within three years from the date the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan.

(i) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, the borrower must—

- (1) Comply with the requirements of paragraphs (h)(1) and (h)(2) of this section; and
- (2) Sign a statement acknowledging that—

(i) 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 a new loan is made, unless that impairment substantially deteriorates; and

(ii) Collection activity will resume on any loan in a conditional discharge period, as described in § 674.61(b)(9).

(j) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period described in §§ 674.61(b), 682.402(c), or 685.213(a), the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

* * * * *

3. Section 674.51 is amended by adding a new paragraph (s) to read as follows:

§ 674.51 Special definitions.

* * * * *

(s) *Total and permanent disability:* The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

* * * * *

- 4. Section 674.61 is amended by:
 - A. Revising the section heading.
 - B. Revising paragraph (a).
 - C. Revising paragraph (b).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

(a) *Death.* An institution must discharge the unpaid balance of a borrower’s Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation supporting the discharge request.

(b) *Total and permanent disability.* (1) If the Secretary has made an initial determination that the borrower is totally and permanently disabled, as defined in § 674.51(s), the loan is conditionally discharged for up to three years from the date that the borrower became totally and permanently disabled, as certified by a physician. The Secretary suspends collection activity on the loan from the date of the initial determination of total and permanent disability until the end of the three-year conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the date the borrower became totally and permanently disabled as certified under § 674.61(b)(3) are returned to the sender.

(2) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period described in paragraph (b)(1) of this section—

(i) The borrower’s annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(ii) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status.

(3) If a borrower becomes totally and permanently disabled after receiving a Defense, NDSL, or Perkins loan, the institution must assign the loan to the Secretary if the borrower submits a certification by a physician and the institution reviewed the application and

determined that it is complete and that it supports the conclusion that the borrower has a total and permanent disability as defined in § 674.51(s).

(4) At the time the loan is assigned to the Secretary the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(5) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(6) If the Secretary makes an initial determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years after the date the borrower became totally and permanently disabled as certified under § 674.61(b)(3). This notification identifies the conditions of the conditional discharge period specified in paragraphs (b)(6) through (b)(9) of this section and specifies that all or part of the three-year period may predate the Secretary's initial determination.

(7) During the conditional discharge period, the borrower—

- (i) Is not required to make any payments on the loan;
- (ii) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;
- (iii) Must promptly notify the Secretary of any changes in address or phone number;
- (iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(i) of this section; and
- (v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(8) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in paragraph (b)(2) of this section, the balance of the loan is discharged.

(9) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for

total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (b)(6) of this section through the end of the conditional discharge period.

(10) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(11) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

6. In § 682.200(b) the definition of "Totally and permanently disabled" is revised to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Totally and permanently disabled.

The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

* * * * *

7. Section 682.201 is amended by:

- A. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(8), and (a)(9), respectively.
- B. Adding a new paragraph (a)(5).
- C. Adding a new paragraph (a)(6)(iii).
- D. Revising redesignated paragraph (a)(6) introductory text and (a)(6)(i) and (ii).
- E. Adding a new paragraph (a)(7).

The additions and revisions read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(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 under § 682.402(c).

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student 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) In the case of a borrower whose previous loan under title IV of the Act was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section. If the borrower receives another loan within three years from the date that the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan.

(7) In the case of a borrower whose prior loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, 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, as described in paragraph 682.402(c)(16).

* * * * *

8. Section 682.402 is amended by:

- A. Revising paragraph (b)(2).
- B. Revising paragraph (b)(3).
- C. Revising paragraph (c)(1)(i).

D. Redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(iii) and (c)(1)(iv), respectively.

E. Adding a new paragraph (c)(1)(ii).

F. Revising redesignated paragraph (c)(1)(iii).

G. Amending redesignated paragraph (c)(1)(iv)(A) by removing the reference to paragraphs “(c)(1)(i) and (ii)” and adding, in its place, “(c)(1)(i) through (iii)”.

H. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraph “(c)(1)(iii)(A)” and adding, in its place, “(c)(1)(iv)(A)”.

I. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraphs “(c)(1)(i) and (ii)” and adding, in its place, “(c)(1)(i) through (iii)”.

J. Amending redesignated paragraph (c)(1)(iv)(C) by removing the reference to paragraph “(c)(1)(iii)(A)” and adding, in its place, “(c)(1)(iv)(A)”.

K. Revising paragraph (c)(2).

L. Revising paragraph (c)(3).

M. Redesignating paragraph (c)(4) as paragraph (c)(5).

N. Adding a new paragraph (c)(4).

O. Revising redesignated paragraph (c)(5).

P. Adding new paragraphs (c)(6) through (c)(16).

Q. Revising paragraph (g)(1)(iii).

R. Revising paragraph (k)(5)(i).

S. Redesignating paragraph (k)(5)(ii) as paragraph (k)(5)(iii).

T. Adding a new paragraph (k)(5)(ii).

U. Revising paragraph (r)(1).

V. Redesignating paragraphs (r)(2) and (r)(3) as paragraphs (r)(4) and (r)(5), respectively.

W. Adding a new paragraph (r)(2).

X. Adding a new paragraph (r)(3).

Y. Revising redesignated paragraph (r)(5).

The additions and revisions read as follows:

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

* * * * *

(b) * * *

(2) 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 an original or certified copy of the death certificate. 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 supporting the discharge request.

(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 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.

* * * * *

(c) * * *

(1)(i) If the Secretary has made an initial determination that the borrower is totally and permanently disabled, as defined in § 682.200(b), the loan is conditionally discharged for up to three years from the date that the borrower became totally and permanently disabled, as certified by a physician. The Secretary suspends collection activity on the loan from the date of the initial determination of total and permanent disability until the end of the conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the date the borrower became totally and permanently disabled as certified under § 682.402(c)(2), are returned to the sender.

(ii) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year period described in paragraph (c)(1)(i) of this section—

(A) The borrower’s annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation loan that does not include any loans that are in a conditional discharge status.

(iii) Except as provided in paragraph (c)(1)(iv)(A) of this section, a borrower is not considered totally and permanently disabled based on a

condition that existed at the time the loan was made unless the borrower’s condition substantially deteriorated.

* * * * *

(2) After being notified by the borrower or the borrower’s representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower’s representative submit, on a form approved by the Secretary, a certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b).

(3) The lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(5) or (c)(7) of this section, after receiving the physician’s certification or letter the lender may not attempt to collect from the borrower or any endorser.

(4) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b).

(5) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, or if the lender does not receive the physician’s certification of total and permanent disability within 60 days of the receipt of the physician’s letter requesting additional time, as described in paragraph (c)(3) of this section, 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.

(6) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b).

(7) If the guaranty agency does not pay the disability claim, 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 a disability 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 first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(8) If the guaranty agency pays the disability claim, the lender must notify the borrower that the loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(9) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(10) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(11) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(12) If the Secretary determines that the certification and information provided by the borrower do not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(13) If the Secretary makes an initial determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan is conditionally discharged and that the conditional discharge period will last for up to three years after the date the borrower became totally and permanently disabled as certified under § 682.402(c)(2). The notification identifies the conditions of the conditional discharge period specified in paragraphs (c)(13) through (c)(16) of this section and specifies that all or part of the three-year period may predate the Secretary's initial determination.

(14) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan;

(ii) Is not considered delinquent or in default on the loan, unless the borrower was delinquent or in default at the time the conditional discharge was granted;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1)(ii)(A) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(15) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in § 682.402(c)(1)(ii), the balance of the loan is discharged.

(16) If, at any time during the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (c)(13) of this section through the end of the conditional discharge period.

* * * * *

(g) * * *

(1) * * *

(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.

* * * * *

(k) * * *

(5) * * *

(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) dies, 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 guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

* * * * *

(r)(1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that

as 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 for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the agency forwards the payments, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

* * * * *

(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.

* * * * *

**PART 685—WILLIAM D. FORD
FEDERAL DIRECT LOAN PROGRAM**

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

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

10. Section 685.200 is amended as follows:

A. By revising paragraphs (a)(1)(iv)(A) and (B).

B. By adding new paragraph (a)(1)(iv)(C).

The revised and added text reads as follows:

§ 685.200 Borrower eligibility.

(a)(1) * * *

(iv)(A) In the case of a borrower whose prior loan under title IV of the Act 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 the Direct Loan the borrower receives 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.

(B) In the case of a borrower whose prior loan under title IV of the Act was discharged on or after July 1, 2001 and before July 1, 2002 after a final determination of total and permanent disability, the borrower—

(1) Complies with the requirements of paragraph (a)(1)(iv)(A) of this section; and

(2) If the borrower receives another loan within three years from the date that the borrower became totally and permanently disabled, as certified by the physician, reaffirms the previously discharged loan. For the purposes of this paragraph, 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 signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower, making a payment on the loan, or signing a repayment agreement.

(C) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled—

(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 prior loan nor the Direct Loan that the borrower receives may 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.

* * * * *

11. Section 685.212 is amended as follows:

A. By revising paragraph (a).

B. By revising paragraph (b).

C. By revising paragraph (g)(1).

D. By redesignating paragraph (g)(2) as (g)(3).

E. By adding a new paragraph (g)(2).

The additions and revisions read as follows:

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or the 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 an original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan) death certificate.

(2) If an original or certified copy of the death certificate is not available, the Secretary discharges the loan only based on other reliable documentation that establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

(b) *Total and permanent disability.* If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

* * * * *

(g) * * *

(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 the borrower became totally and permanently disabled, as certified under § 685.213(b).

* * * * *

12. A new § 685.213 is added to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) If the Secretary makes an initial determination that a borrower is totally and permanently disabled, the Secretary—

(i) Notifies the borrower that the loan will be in a conditional discharge status for up to three years from the date that the borrower became totally and permanently disabled, as certified under § 685.213(b). The Secretary also notifies the borrower of the conditions of the conditional discharge period, and that all or part of the three-year conditional discharge period may predate the Secretary's initial determination.

(ii) Suspends any efforts to collect on the loan from the date of the initial determination described in paragraph (a)(1) of this section until the end of the conditional discharge period.

(2) If the borrower continues to meet the eligibility requirements for total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns to the borrower any payments received after the date the borrower became totally and permanently disabled, as certified under § 685.213(b).

(3) If the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge at any time during or at the end of the three-year conditional discharge period, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (a)(1) of this section through the end of the conditional discharge period.

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

(b) *Initial determination of total and permanent disability.* The Secretary makes an initial determination that a borrower is totally and permanently disabled if the borrower (or the borrower's representative) provides the Secretary with a certification (on a form approved by the Secretary) by a physician who is a doctor of medicine or osteopathy and legally authorized to

practice in a State that the borrower is totally and permanently disabled as defined in 34 CFR 682.200(b).

(c) *Eligibility requirements for total and permanent disability discharge.* A borrower meets the eligibility requirements for total and permanent disability discharge if, during and at the end of the three-year conditional discharge period described in paragraph (a)(1) of this section—

(1) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and (2) The borrower does not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct consolidation loan that does not include any loans that are in a conditional discharge status.

(d) *Conditional discharge period.* During the conditional discharge period

described in paragraph (a)(1) of this section, the borrower—

(1) Is not required to make any payments of principal or interest on the loan beginning on the date the Secretary makes an initial determination that the borrower is totally and permanently disabled;

(2) Is not considered to be delinquent or in default on the loan, unless the loan was delinquent or in default at the time the conditional discharge was granted;

(3) Must promptly notify the Secretary of any changes in the borrower's address or telephone number;

(4) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1) of this section; and

(5) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(e) *Provisions for discharge of Direct Consolidation Loans.* (1) For a Direct

Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under the provisions of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(2) For the purposes of discharging a loan under paragraph (e)(1) of this section, the provisions of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(3) If requested, a borrower seeking to discharge a loan obligation under paragraph (e)(1) of this section must provide the Secretary with the disbursement dates of the underlying loans.

(Authority: 20 U.S.C. 1087a *et seq.*)

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