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# Part IV

# Department of Education

## 34 CFR Part 668 et al.

## Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 668, 674, 682, and 685**

**RIN 1845–AA23**

## Student Assistance General Provisions, 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:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Student Assistance General Provisions, Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, to provide benefits to students and borrowers, and to protect taxpayers' interests.

**DATES:** We must receive your comments on or before October 7, 2002.

**ADDRESSES:** Address all comments about these proposed regulations to Ms. Gail McLarnon, U.S. Department of Education, P.O. Box 33076, Washington, DC 20033–3076. We encourage commenters to use e-mail because paper mail in the Washington area may be subject to delay, but please use one method only to provide your comments. If you comment via e-mail, we will send a return e-mail acknowledging our receipt of your comments. If you choose to send your comments through the Internet, use the following address: *LoanNPRM@ed.gov*

You must include the term ''Team I Loan Issues'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail McLarnon, Telephone: (202) 219–7048 or via the Internet: *gail.mclarnon@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as they are discussed in the Significant Proposed Regulations section of this document.

Section 482(c)(1) of the Higher Education Act of 1965, as amended (HEA) provides that in order for a regulatory change to be effective for the start of an award year on July 1, it must have been published in final form in the **Federal Register** no later than the preceding November 1. The Secretary's intent is to publish final rules resulting from this NPRM by November 1, 2002, making the new rules effective on July 1, 2003. However, section 482(c)(2) of the HEA allows the Secretary to designate regulatory provisions that an entity subject to the provision may, at its option, choose to implement earlier. Therefore, we are seeking suggestions on which of the proposed regulatory provisions in this NPRM, if finalized, should be so designated.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations at 1990 K Street, NW (8th Floor), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule an appointment to inspect the public comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

### Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject all proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes must conform to agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements.

We developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in response to a May 24, 2001, request for recommendations on improving the Title IV student assistance programs from Representative Howard P. ''Buck'' McKeon and Representative Patsy Mink, the Chairman and Ranking Member, respectively, of the Subcommittee on 21st Century Competitiveness of the Education and the Workforce Committee of the U.S. House of Representatives.

On December 5, 2001, we published a notice in the **Federal Register** (66 FR 63203) announcing our intent to establish two negotiated rulemaking committees to develop proposed regulations. One committee (Committee I) would address issues related to the Title IV student loan programs. The other committee (Committee II) would address all other Title IV student aid issues. The notice requested nominations of individuals for membership on the committees who represented key stakeholder constituencies that are involved in the student financial assistance programs, with preference given to individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. In the notice, we identified the constituencies with interests that are

significantly affected by the subject matter of the negotiated rulemaking and announced that we expected that representatives of each of those constituencies would likely be selected as members of one, or both, committees. This Notice of Proposed Rulemaking (NPRM) is the result of the deliberations of Committee I.

The members of Committee I were:

- Corye Barbour and Ellynne Bannon (alternate), representing students, including the United States Student Association and the State PIRGs (Public Interest Research Groups) Higher Education Project;
- Deanne Loonin and Amy Marshall (alternate), representing legal assistance organizations that represent students; including the National Consumer Law Center and Community Legal Services;
- Irv Bodofsky and Virginia Foster (alternate), representing financial aid administrators at institutions of higher education; including the National Association of Student Financial Aid Administrators;
- Alisa Abadinsky and Laurie Quarles (alternate), representing business officers and bursars at institutions of higher education, and institutional servicers; including the Coalition of Higher Education Assistance Organizations and the National Association of College and University Business Officers;
- Reginald T. Cureton and William ''Buddy'' Blakey (alternate), representing institutions of higher education eligible to receive assistance from programs authorized under Titles III and V of the HEA; including the United Negro College Fund and the National Association for Equal Opportunity in Higher Education;
- George Chin and Patricia Smith (alternate), representing four-year public institutions of higher education; including the American Association of State Colleges and Universities;
- William Schilling and Maureen R. Budetti (alternate), representing private, non profit institutions of higher educations; including the National Association of Independent Colleges and Universities and the Association of American Jesuit Colleges and Universities;
- Ray Testa and Nancy Broff (alternate), representing for-profit postsecondary institutions; including the American Association of Cosmetology Schools and the Career College Association;
- Scott Miller and Elise Nowikowski (alternate), representing guaranty agencies and guaranty agency servicers; including the National Council of Higher Education Loan Programs, the Student Loan Servicing Alliance, the Guaranty Agency CEO Caucus, the National Association of Student Loan Administrators, Sallie Mae (USA Education, Inc.), and the National Association of State Scholarship and Grant Programs;
- Jane Stewart and Gail Somerville (alternate), representing lenders, secondary markets, and loan servicers; including the Consumer Bankers Association, the Education Finance Council, the Student Loan Servicing Alliance, the National Council of Higher Education Loan Programs, ELM Resources, and Sallie Mae;
- Dan Madzelan, representing the U.S. Department of Education.

At its first meeting, Committee I reached agreement on its protocols and agenda. During later meetings, the Committee reviewed and discussed drafts of proposed regulations. The Committee met over the course of several months, beginning in January 2002.

In addition to the proposed regulations discussed under the section of this document called Significant Proposed Regulations, Committee I discussed other issues related to the administration of the Title IV loan programs. One of these issues, which related to late disbursements of Title IV aid, was referred with recommendations to Committee II for disposition. Another issue that would have changed the regulation that provides that any single installment payment in a graduated or income sensitive repayment schedule cannot be more than three times greater than any other payment could not be addressed since there would be significant budgetary implications to the suggested change. One of the principles that the Secretary placed around this regulatory process was that no proposed change could have cost implications.

In order for the committee to have reached consensus, no member of the committee could dissent on the proposed regulations.

Consensus was reached by the members of Committee I on all of the proposed regulations in this document.

## Significant Proposed Regulations

The following discussion of the proposed regulations begins with changes that affect more than one of the Title IV student loan programs.

This is followed by separate discussions of changes that affect only one of the three programs—the Perkins Loan Program, the FFEL Program, and the Direct Loan Program. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

## Perkins Loan Program, FFEL Program, and Direct Loan Program Changes

*Rehabilitation of Defaulted Loans (Sections 668.35, 674.39, 682.405, and 685.211)*

*Current Regulations:* Section 668.35 of the current regulations allows a borrower who is in default on a Title IV loan to regain eligibility for additional Title IV assistance by either repaying the loan in full or by making arrangements to repay the loan that are satisfactory to the holder of the loan and in accordance with the individual Title IV loan program regulations. In addition, the borrower must, as part of those satisfactory arrangements, make at least six consecutive monthly payments. The regulations do not explicitly address defaulted loans on which a judgment has been obtained by a Perkins school lender, a guaranty agency, or by the Department.

Sections 674.39 and 682.405 of the current regulations require schools and guaranty agencies to make a loan rehabilitation program available to all defaulted Perkins, and FFEL borrowers, respectively, as required by the HEA. Section 685.211 implements the rehabilitation program for the Direct Loan Program. Sections 674.39 and 682.405 of the regulations also require a borrower who wishes to rehabilitate a loan on which a judgment has been obtained to sign a new promissory note. We also apply this requirement when rehabilitating a defaulted Direct Loan.

*Suggested Change:* Many schools that participate in the Perkins Loan Program suggested that rehabilitation should not be available to a borrower who had a Perkins Loan on which a judgment has been obtained. As a result of this suggestion, we included this issue on the negotiated rulemaking agenda and expanded the discussion to include the FFEL and Direct Loan programs.

Those schools that suggested the change for the Perkins Loan program and the negotiators representing their interests argued that requiring schools to offer rehabilitation to borrowers against whom they have secured a judgment is not in the best interests of the Perkins Loan Program. They noted that Perkins schools are required by the regulations to litigate in certain circumstances to collect a defaulted loan. They stated that the considerable amount of effort and financial resources spent on litigation to obtain a judgment is wasted when the school is later required to vacate that judgment upon receipt of the borrower's 12 consecutive monthly payments, as part of a rehabilitation plan. They also noted that by the time a school is required to

commence litigation and obtain a judgment on a defaulted loan, the borrower has had ample opportunity to rehabilitate the defaulted loan. Those negotiators pointed out that vacating the judgment also results in additional court and legal fees and jeopardizes future collection efforts and litigation if the borrower subsequently re-defaults. Finally, they noted that the judgment obtained as the result of litigation was the enforceable debt instrument, and therefore the borrower arguably was not entitled to the benefit of rehabilitation under the original promissory note.

*Proposed Regulations:* We are proposing to amend §§ 674.39(a), 682.405(a)(1), and 685.211(f) of the regulations to exclude from rehabilitation defaulted Perkins, FFEL, and Direct Loan program loans on which a judgment has been obtained. In doing so, we are also proposing conforming changes to remove the requirements in §§ 674.39(a)(3) and 682.405(a)(4) relating to rehabilitation of a loan on which a judgment has been issued.

We are also proposing to amend § 668.35 by adding a paragraph that allows a borrower who is subject to a judgment to re-establish eligibility for Title IV, HEA program assistance by repaying the debt in full, or by making repayment arrangements that are satisfactory to the holder of the debt and that include at least six consecutive monthly payments. We also propose to add a new paragraph to § 668.35, which provides that a student may reestablish eligibility under the provisions of § 668.35 only once. Finally, we are proposing to revise § 682.405(b)(1) to clarify that voluntary payments do not include payments made after a judgment has been obtained on a loan.

*Reason:* During the discussion of the suggested change to the regulations, several negotiators expressed interest in amending the regulations to make rehabilitation of a loan on which a judgment has been obtained optional for the loan holder because they saw instances where providing some of the benefits of rehabilitation to certain borrowers could increase debt recovery and allow borrowers to rectify the past default. We noted that there was no statutory basis for providing a loan holder the option of offering rehabilitation to some borrowers against whom the holder had a judgment and not to others. However, we suggested that there were options that holders could consider to permit them to work with borrowers against whom they had a judgment in ways that could increase collections on defaulted loans and provide borrowers in default with some benefits as an incentive to make payments on their debt.

Prior to this rulemaking process, the regulations allowed borrowers against whom a judgment has been issued on a Title IV loan the same opportunity for rehabilitation of the loan as any other defaulted borrower. However, after considering the negative effects of this policy cited by the Perkins schools, we noted that neither of the statutory sections creating the rehabilitation program (Section 428F of the HEA for the FFEL and the Direct Loan programs and section 464(h) of the HEA for the Perkins Loan Program) specifically require that rehabilitation be offered to borrowers against whom there is a judgment. We also considered statistical information we received from some Perkins Loan lenders showing that rehabilitation was not generally effective for borrowers against whom the lender had obtained judgments. Based on these considerations we decided that it was appropriate to change the regulations to provide more flexibility to schools and other loan holders in developing repayment arrangements with individual debtors, by eliminating loans on which a judgment has been obtained from the scope of the rehabilitation programs.

Although the proposed regulations exclude a loan on which a judgment has been obtained from being rehabilitated, the proposed regulations would provide that a loan holder may, at its option, enter into an agreement with a borrower against whom it had obtained a judgment. For example, an agreement could include a commitment from the holder that if the borrower made 12 consecutive monthly payments and then signed a new promissory note, the holder would vacate the judgment and request that the default be removed from the debtor's credit history. Under such an agreement, the borrower in default would receive many of the benefits of rehabilitation but, as opposed to the current regulations, the loan holder would have more flexibility to define the terms of the repayment agreement and to maximize the recovery of the debt from the defaulted borrower.

Some negotiators were concerned that borrowers with a judgment against them would not only be excluded from the benefits of rehabilitation, but would also be unable to receive other benefits of the Title IV programs. In particular, these negotiators were concerned that the borrower against whom there is a judgment would be unable to regain eligibility for additional Title IV aid, and would be ineligible for the discharge of the loan obligation under various statutory provisions unless the judgment had been fully satisfied.

In the case of a borrower regaining eligibility, the proposed changes to § 668.35 allow a borrower who is subject to a judgment obtained on a defaulted Title IV loan the opportunity to regain eligibility. However, we propose to modify the current rules under which a judgment debtor may regain eligibility to provide schools and guarantors with greater flexibility to recover loans on which a judgment has been obtained. The negotiators agreed on new provisions that allow the loan holder to determine what terms must be satisfied for a judgment debtor to regain eligibility for Title IV aid, as long as those arrangements include the making of at least six consecutive monthly payments.

On the issue of other benefits, we explained to the negotiators that these proposed regulations address rehabilitation and eligibility for additional Title IV aid and not any other aspect of the programs. Accordingly, the proposed regulations would not affect a borrower's eligibility for other Title IV loan benefits.

After these clarifications were made, the negotiators reached agreement on the proposed changes.

*Retention of Promissory Notes (Sections 674.19, 682.402, and 682.414)*

*Current Regulations:* The FFEL Program regulations include a provision that allows lenders and guaranty agencies to store a promissory note electronically only under certain circumstances. There is no corresponding regulation in the Perkins Loan Program.

*Suggested Change:* FFEL loan holders requested clarification of the technical change that was made to the regulations in June 2001 that was related to the retention of promissory notes that were signed electronically. We suggested that the Perkins Loan regulations should also include a provision concerning the retention of promissory notes that were signed electronically.

*Proposed Regulations:* The proposed regulations state that if a promissory note was signed electronically it must be stored electronically in accordance with the record retention requirements of § 668.24(d)(3)(i) through (iv).

*Reason:* The committee agreed to the proposed change to the FFEL Program regulations to make clear that promissory notes that were signed electronically must be maintained electronically in accordance with the record retention requirements of 34 CFR 668.24(d)(3)(i) through (iv). The committee also agreed to add similar

language to the Perkins Loan Program regulations.

*Economic Hardship Deferments (Sections 674.34, 682.210, and by Reference 685.204)*

*Current Regulations:* Some borrowers of loans made under the FFEL, Direct Loan, or Perkins Loan programs are eligible to receive a deferment of the obligation to make payments for up to three years if the borrower is unable to make payments because of an economic hardship. Under current regulations, borrowers may qualify for an economic hardship deferment if they have an educational debt to income ratio that is higher than a specified percentage. When calculating a borrower's educational debt burden, the loan holder must consider the borrower's monthly payments on all Federal postsecondary education loans. Current regulations for all three Title IV student loan programs require that the monthly payment amount be based on what the payment would be if the borrower were repaying the loan over a 10 year period from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the borrower's actual monthly payment amount.

*Suggested Change:* Initially, we suggested that the regulations be changed so that the borrower's actual monthly payment amount would be used to determine eligibility for an economic hardship deferment. This change was suggested because many Perkins Loan borrowers repay their loans in less than 10 years. Using a 10-year repayment schedule results in a monthly payment amount that is less than what the borrower is actually paying each month, and as a result, the borrower may not qualify for an economic hardship deferment. During the committee's preliminary discussion of this suggested change, a non-Federal negotiator suggested that corresponding changes be made to the regulations governing economic hardship deferments in the FFEL and Direct Loan programs.

*Proposed Regulations:* The proposed regulations would change the monthly payment amount that loan holders must use to calculate a Perkins, FFEL, or Direct Loan program borrower's monthly educational loan payment burden in determining whether the borrower qualifies for an economic hardship deferment. Specifically, the proposed regulations would require a school for the Perkins Loan Program, an FFEL Program loan holder, or the Secretary to use the borrower's actual monthly payment amount if the loan is scheduled to be repaid in 10 years or less, or a monthly payment amount based on a 10-year repayment schedule if the borrower's actual repayment schedule is more than 10 years.

*Reason:* The proposed regulations would allow a borrower to receive an economic hardship deferment more easily. Borrowers in all three programs whose repayment schedules are less than 10 years in length would no longer be penalized by the required use of a monthly payment amount that is less than their actual monthly payment amount. The FFEL and Direct Loan programs provide for repayment plans of more than 10 years. FFEL and Direct Loan borrowers whose repayment schedules are more than 10 years in length would continue to benefit by having the monthly payment amount based on a 10-year repayment schedule.

*Initial and Exit Counseling (Sections 674.42, 682.604, and 685.304)*

*Current Regulations:* Current regulations require that schools provide initial counseling to students who are borrowing under the FFEL or Direct Loan programs for the first time. While the Perkins Loan Program does not have specific initial counseling regulations, Perkins schools are required to provide certain information to borrowers prior to making the first disbursement of a loan. The regulations also require schools to provide exit counseling to students who have borrowed from any of the three Title IV student loan programs. Further, someone familiar with the Title IV student aid programs must be reasonably available to answer the borrowers' questions following both entrance and exit counseling.

The current Perkins, FFEL, and Direct Loan program counseling regulations require that schools provide the counseling to borrowers at specific times and under specific conditions. The current regulations also specify information that must be disclosed to borrowers through the counseling.

*Suggested Change:* It was suggested that the Perkins Loan, FFEL, and Direct Loan program counseling regulations be revised to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. This change was suggested to make the regulations consistent with longstanding Departmental guidance that allows a school to arrange for another party to provide counseling to the school's borrowers as long as the school ensured that the counseling was provided and that it included all of the necessary information. It was also suggested that the current Perkins Loan, FFEL, and Direct Loan program counseling regulations be revised so that the information that must be disclosed to borrowers through counseling would be consistent across all three programs.

*Proposed Regulations:* The proposed regulations would clarify that, for initial counseling under the FFEL and Direct Loan programs and for exit counseling under all three loan programs, the school need not provide the counseling but must ensure that it is provided, that it includes all of the required information, and that someone familiar with the Title IV student aid programs be available to answer students' questions following the counseling.

We are not proposing changes to the Perkins Loan Program regulations governing the information that a school must provide to a borrower prior to making the first disbursement of a loan.

As suggested, the proposed regulations would establish consistency across all three programs in the information that is required to be covered during counseling. When reviewing the counseling regulations for consistency, the committee noted that while the current Direct Loan Program regulations require the disclosure of average and anticipated indebtedness information, the FFEL Program regulations do not. After discussing the feasibility of schools providing this information, we modified the Direct Loan language to require only disclosure of average anticipated repayment amounts and added the same language to the FFEL regulations.

We also proposed that schools provide borrowers with information about the availability of the Department's National Student Loan Data System (NSLDS).

*Reason:* The proposed changes were made to reflect our long-standing guidance that a party other than the school may provide counseling to borrowers on a school's behalf. We modified the Direct Loan regulations and added to the FFEL regulations the requirement that schools, during exit counseling, provide borrowers with information about average monthly repayment amounts so that the borrowers will be better informed about their upcoming student loan repayment obligations.

Finally, the negotiators agreed that it is important for borrowers to be informed that they may access NSLDS to review information about all of their Title IV student loans.

*FFEL and Direct Loan—Loan Limits (Sections 682.204 and 685.203)*

*Current Regulations:* The current FFEL and Direct Loan program regulations specify maximum annual

loan limits for undergraduate students based on the number of years of an undergraduate program that the student has successfully completed.

*Suggested Change:* In light of questions that have arisen over the past several years, we proposed that the regulations clarify that a school may not link separate, stand-alone programs to allow students to be eligible for higher annual loan limits.

*Proposed Regulations:* The proposed regulations would specify that a student who is enrolled in a program that is one academic year or less in length is subject to the annual loan limits that apply to first-year undergraduates, and that a student who is enrolled in a program that is more than one academic year in length is subject to the first- and second-year annual loan limits for the first two years of that program. For example, if a school offers programs ''A'' and ''B,'' each of which is one academic year in length, and the school requires students to have completed program ''A'' as a prerequisite for admission into program ''B,'' students may not borrow at the second-year undergraduate level for program ''B'' based on the fact that they successfully completed program ''A.'' Similarly, if a school offers a program that is two academic years in length, and requires students to have completed a separate one-year program as a prerequisite for admission into the two-year program, it may not consider the first and second years of that program to be the second and third years of an undergraduate program for loan limit purposes.

These proposed regulations do not affect the special statutory rule reflected in §§ 682.204 and 685.203 that allows a borrower, who has received an associate or baccalaureate degree and who enrolls in a new program for which such a degree is required, to borrow up to the higher annual loan limits that apply to borrowers who have successfully completed the first and second years of an undergraduate program. The proposed regulations also do not restrict an institution from determining the number of years a borrower has completed based on hours earned at another institution that are applicable to the program at the new institution.

*Reason:* For program integrity reasons, we believe that it is important to clearly state that, except as provided in the HEA, a school may not allow a student to qualify for higher annual loan limits based on prior completion of one or more years of study in a program other than the one in which the student is currently enrolled.

*FFEL—Unemployment Deferment (Sections 682.210 and by reference 685.204)*

*Current Regulations:* For any unemployment deferment period beyond the initial period granted by the lender, the FFEL regulations, and by reference the Direct Loan regulations, require a borrower who does not qualify for an unemployment deferment based on evidence of eligibility for unemployment benefits to provide the lender with a written certification describing the borrower's diligent search for full-time employment during the preceding six months. The regulations require the borrower to submit specific information about these attempts to gain employment, including the name of the employer contacted and the employer's address and telephone number or other information acceptable to the holder, showing that the borrower made at least six diligent attempts to gain employment. For both initial and subsequent deferment requests, the regulations further require that a borrower who does not qualify based on evidence of eligibility for unemployment benefits affirm in a written certification that he or she has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, and provide the agency's name, address, and the date the borrower registered with the agency.

*Suggested Change:* FFEL Program participants suggested revising the regulations governing unemployment deferments to simplify the process for those borrowers who do not qualify based on their eligibility for unemployment benefits. They stated that the regulations should be changed to simplify the information required to support the borrower's written certification that he or she has searched for full-time employment. They believed that allowing the borrower to certify to the diligent employment search and registration with an employment agency without providing additional information about the specific contacts was sufficient, given that the borrower's application for the deferment was certified under penalty of perjury. They also believed that this streamlined process was consistent with the fact that, given technological changes, a search for employment may be conducted in different ways and may not always involve direct contact with a particular person at an employer.

The negotiators representing FFEL Program lenders, servicers, and guarantors suggested eliminating the requirement for a written certification from the borrower confirming his or her diligent search for full-time employment. They supported their request by citing changes in the procedures used to apply for State unemployment benefits which now include certain oral and automated processes.

With regard to the certification of registration with an employment agency, the non-federal negotiators suggested that the 50-mile radius be based on where the borrower is currently residing rather than the borrower's permanent or other address that may no longer be relevant to the borrower's job search.

*Proposed Regulations:* The proposed regulations would provide that a borrower may qualify for an unemployment deferment beyond the initial unemployment deferment period by providing a written certification, or an equivalent as approved by the Secretary, that the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment, without providing the details of those contacts. Similarly, the proposed regulations would allow the borrower to certify, if required, that he or she has registered with a local employment agency without providing the details of the registration. Finally, the proposed regulations also provide that the 50-mile radius requirement for registration with an employment agency be based on the borrower's current address.

As we have previously stated, as a general rule, the term ''written certification'' also includes electronically submitted certifications. Given technological or other developments, the Secretary may, in the future, approve other methods of submission that are equivalent to a written certification as long as such methods protect the integrity of the programs.

*Reason:* The negotiators believed that these proposed changes to the unemployment deferment regulations were appropriate for the reasons discussed above.

*FFEL and Direct Loan—Consolidation Loan Benefits (Sections 682.402, 685.212, and 685.220)*

*Current Regulations:* Under current regulations in the FFEL and Direct Loan programs, if a borrower meets the requirements for a loan discharge based on school closure, false certification, or unpaid refund on one or more of the loans that were repaid by a consolidation loan, but does not qualify for discharge on other loans that were

consolidated, the borrower may receive a partial discharge of the consolidation loan. However, the current regulations do not allow a borrower to receive a partial discharge of a consolidation loan based on a total and permanent disability. To receive a discharge of a consolidation loan based upon a total and permanent disability, the borrower must meet the conditions for a total and permanent disability discharge on all of the loans that were consolidated.

The current regulations provide for the discharge of a PLUS loan if the student on whose behalf the loan was obtained dies. However, if a parent borrower consolidates a PLUS loan and the student for whom that loan was obtained dies, a discharge of the portion of the consolidation loan attributable to that PLUS loan is not available.

In general, the current FFEL and Direct Loan program regulations provide for discharge of a joint consolidation loan only if each borrower meets the requirements for a loan discharge. There is an exception to this rule only for discharges based on school closure, false certification, or an unpaid refund. If one borrower meets the requirements for one of those discharges on a loan that was consolidated into a joint consolidation loan, but the other borrower does not qualify for any type of discharge, the regulations provide for a partial discharge of the joint consolidation loan.

*Suggested Change:* Some FFEL Program participants suggested that the regulations be modified to allow for the partial discharge of a consolidation loan if a borrower meets the requirements for discharge due to total and permanent disability on one or more, but not all, of the loans that were consolidated.

It was also suggested that the regulations be changed so that a parent borrower would qualify for a partial discharge of a consolidation loan if the consolidation loan repaid a PLUS loan obtained for a student who died.

We also suggested that the provisions for partial discharge of a joint consolidation loan be extended to cover cases in which one of the borrowers dies or becomes totally and permanently disabled, but the other borrower does not qualify for any type of discharge.

*Proposed Regulations:* The proposed regulations would specify that, if a consolidation loan repaid a PLUS loan obtained for a student who died, the portion of the consolidation loan attributable to that PLUS loan will be discharged. They would also provide for the discharge of the applicable portion of a joint consolidation loan if one of the borrowers dies or becomes totally and permanently disabled.

The proposed changes to § 685.220(l) of the Direct Loan Program regulations include new language stating that a joint Direct Consolidation Loan may be partially discharged if one of the borrowers qualifies for forgiveness under the teacher loan forgiveness program. The proposed change to the Direct Loan regulations would merely clarify current policy and provide for a more complete set of cross-references to the loan discharge types covered in § 685.212 of the regulations. Because the construction of the FFEL regulations currently provides for the partial discharge of a joint consolidation loan in this situation a change is not needed in the FFEL regulations.

*Reasons:* We declined to accept the suggested change that would allow for the partial discharge of a consolidation loan based on a total and permanent disability when a borrower meets the requirements for discharge on some, but not all, of the loans that were consolidated. The only way that some, but not all, of a borrower's consolidated loans could be eligible for a disability discharge would be if the ineligible loans were made after the date the borrower became totally and permanently disabled. This means that the borrower was no longer totally and permanently disabled and therefore not eligible for a discharge on any of the loans. The other negotiators agreed with our decision. We suggested the other changes described above because we believe that borrowers should be permitted to receive discharges that they would have qualified for if they had not consolidated their loans. The proposed changes are consistent with current regulations that allow partial discharge of consolidation loans due to school closure, false certification, and unpaid refunds.

**Perkins Loan Program Changes**

*Federal Perkins Loan—Master Promissory Note (Sections 674.2 and 674.16)*

*Current Regulations:* In § 674.2, the term ''Making of a loan'' is defined as when the borrower signs a promissory note for each award year and the institution makes the first disbursement of loan funds under that promissory note for that award year. The regulations do not define or provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program.

Under § 674.16(d)(2), the institution must obtain the borrower's signature on a promissory note for each award year before disbursing loan funds to the borrower under that note for that award year.

*Suggested Change:* To provide for the use of an MPN in the Federal Perkins Loan Program, we suggested that revisions were needed to the current definition of ''Making of a loan'' and that the regulations needed a specific definition of the term ''Master Promissory Note (MPN)''.

In addition, § 674.16(d)(2) needs to be amended to eliminate the regulatory requirement that a Perkins Loan borrower sign a promissory note for each award year. Finally, the regulations need to clearly state the conditions under which the ability of an institution to make Perkins loans under an MPN expires.

*Proposed Regulations:* The proposed regulations would modify the definition of ''Making a loan'' and add a definition for the term ''Master Promissory Note (MPN)''. They would also modify the requirements of § 674.16(d)(2) to be consistent with the use of an MPN in the Perkins Loan Program.

Proposed § 674.16 would require the institution to ensure that each loan is supported by a legally enforceable promissory note while eliminating the requirement for a new note for each award year. In addition, a new paragraph would be added to this section to state the conditions under which the Perkins Loan MPN would expire.

*Reason:* The adoption of an MPN in the Perkins Loan Program will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. The use of the MPN will reduce burden on both students and institutions and will ensure consistency across the three Title IV loan programs. The proposed changes to the Perkins Loan Program regulations are based on existing regulations for MPNs in the FFEL and Direct Loan programs.

During the negotiations, the negotiator representing State PIRGs expressed concern that the implementation of an MPN in the Perkins program might result in a student incurring additional debt without his or her knowledge. After additional discussion, that negotiator chose, with respect to this issue, to invoke the provision of the committee's protocols that allows one coalition partner to dissent on an issue while the rest of the coalition consents to it. Therefore, our suggestion to introduce an MPN in the Perkins Loan Program and the proposed supporting regulatory changes were both endorsed by the negotiating committee.

*Federal Perkins Loan—Write-Offs (Sections 674.9 and 674.47)*

*Current Regulations:* Current regulations in § 674.9 require a borrower who has a Perkins Loan, a National Direct Student Loan, (NDSL), or a National Defense Student Loan written off to reaffirm that debt in order to receive a new Perkins Loan. Reaffirmation is not required if the amount written off is $25 or less.

Current § 674.47(g) provides that an institution may cease collection activity on a defaulted account with a balance of less than $25 if the borrower has been billed for this balance in accordance with the regulations. The regulations further state that an institution may cease collection activity on a defaulted account with a balance of less than $200 if the institution has carried out the due diligence procedures required by the regulations and if the account has had no payment activity for at least four years. Under current § 674.47(h), an institution may write off an account with a balance of less than $5.

*Suggested Change:* Members of organizations representing Perkins Loan schools suggested that the current $5 Perkins ''write-off'' limit be raised to at least $25.

*Proposed Regulations:* The proposed regulations would amend § 674.47 (g) and (h) to provide increased flexibility to schools to write-off a low balance on a Perkins Loan account. Specifically, the proposed changes maintain the current provision that a school may cease collection activity on a defaulted Perkins Loan account of less than $200 if, for a period of four years, the institution has complied with the due diligence procedures of subpart C of the Perkins Loan regulations and the borrower has not made any payments or otherwise agreed to repay the loan.

The proposed changes would also allow an institution to write off account balances of less than $25, and if the borrower has been billed for at least two years, balances of less than $50.

The proposed regulation would also add new language making it clear that a borrower whose balance has been written off is relieved of all repayment obligations. Finally, a conforming change is proposed that would remove the requirement that a borrower must reaffirm a loan that was previously written off.

*Reason:* We believe that the changes approved by the negotiating committee will reduce costs and administrative burden at Perkins Loans schools.

*Perkins Loan—Transfer of Loan Fund (Section 674.17)*

*Current Regulations:* When an institution responsible for a Perkins Loan fund closes or ceases to participate in the Perkins Loan Program, it must take specific steps to protect the outstanding loans and the Federal interest in the loan fund. Under the current regulations, one of the options available to such an institution is to transfer any outstanding loans to another institution if directed to do so by the Secretary.

*Suggested Change:* We suggested that the regulations be changed to eliminate the option of the Secretary to direct a Perkins Loan institution to transfer its outstanding loans to another institution. We have determined that this is not an appropriate action to take if a Perkins Loan institution closes, or otherwise ends its participation in the program.

*Proposed Regulations:* The proposed change to § 674.17 would eliminate the provision allowing an institution to transfer its Perkins loan portfolio to another institution at the direction of the Secretary.

*Reason:* Several years ago, the Secretary administratively discontinued the practice of directing an institution that closes or otherwise ends its participation in the Perkins Loan Program to transfer its outstanding Perkins loans to another institution. The proposed change to the regulations will reflect that policy and clarify that assignment of Perkins loans to the Secretary is the only option available.

*Federal Perkins Loan—Borrower Repayment (Sections 674.33 and 674.42)*

*Current Regulations:* The current regulations require an institution that chooses to implement the minimum monthly payment option for a Perkins loan borrower to coordinate that minimum monthly payment with any other institution from which the borrower has received Perkins loans.

*Suggested Change:* Organizations that represent schools that participate in the Perkins Loan Program suggested that the regulations be modified to specify that an institution is required to coordinate minimum monthly repayment amounts with other institutions only if the borrower requests such coordination.

*Proposed Regulations:* Under § 674.33 of the proposed regulations, an institution would be required to coordinate a borrower's monthly payments with other institutions only if the borrower informs the institution that he or she wants the minimum monthly repayment determination to be based on payments due to other institutions.

We are also proposing to amend § 674.42 to require the institution to inform borrowers during exit counseling that they request coordination of monthly payments.

*Reason:* Many institutions participating in the Perkins Loan Program are not able to coordinate a borrower's minimum monthly payment amount with other institutions because they are unaware that the borrower has other Perkins loan debt. To address this concern, the negotiators agreed to require an institution to coordinate minimum monthly repayments with other institutions only if the borrower requests such coordination.

To ensure that borrowers who have loans at other institutions are aware that they must ask the institution to coordinate with other institutions in establishing the minimum payment amount, the proposed regulations would add a requirement in § 674.42 that institutions inform borrowers of the minimum repayment coordination provision.

*Perkins Loan—Copies of Promissory Notes (Section 674.42)*

*Current Regulations:* The Perkins Loan Program regulations provide that institutions must disclose critical repayment information to a Perkins loan borrower in a written statement either before the borrower ceases at least half-time study or during the exit interview. As part of the disclosure requirements, the institution must provide the borrower with a copy of the borrower's signed promissory note.

*Suggested Change:* Organizations that represent Perkins Loan schools suggested that the regulations be revised to require an institution to provide a copy of the signed promissory note to the borrower only at the borrower's request.

*Proposed Regulations:* The proposed regulations would eliminate the requirement that the school provide the borrower with a copy of his or her signed promissory note. Instead, the institution would be required, as part of its repayment information disclosure or during the exit interview, to inform each borrower that a copy of the promissory note will be provided upon request and provide each borrower with contact information that will allow the borrower to make such a request.

*Reason:* Many institutions give borrowers a copy of their signed promissory notes before the borrowers leave school, often when the note is first signed. The proposed change decreases the cost and burden of providing duplicate promissory notes for the school but preserves the borrower's

right to easily secure a copy of the signed promissory note.

*Perkins Loan—Late Charges (Section 674.43)*

*Current Regulations:* For Perkins Loans made for periods of enrollment beginning on or after January 1, 1986, institutions are required to impose a late charge if a borrower's payment is overdue.

*Suggested Change:* Organizations representing schools participating in the Perkins Loan Program suggested that the assessment of late charges in the Perkins Loan Program should be made optional for the school rather than mandatory.

*Proposed Regulations:* The proposed regulations would amend § 674.43(b)(2) by allowing the school the option of assessing late charges in the Perkins Loan Program. Consistent with current regulations, an institution that adopts a policy of assessing late charges would be required to impose them on all borrowers with overdue payments. The rules for the calculation and application of late charges would remain as specified in the regulations at § 674.43(b)(2)(iii).

*Reason:* Making the assessment of late charges optional would allow the charge to serve as a more effective collection tool and would reduce administrative burden on institutions.

*Perkins Loan—Credit Bureau Reporting (Section 674.45)*

*Current Regulations:* The current regulations under § 674.16 require an institution to report to at least one national credit bureau the amount and disbursement date of a loan and information concerning the repayment and collection of the loan until the loan is paid in full. This requirement must be disclosed to the borrower under § 674.31. Further, § 674.45(a)(1) requires an institution to report a defaulted loan account to a national credit bureau when a borrower has not responded satisfactorily to the final demand letter or the following telephone contact.

*Suggested Change:* Committee members representing Perkins Loan schools suggested that the regulations clarify when a borrower's default status is to be reported to a national credit bureau.

*Proposed Regulations:* We are proposing to revise the provisions governing credit bureau reporting in § 674.45(a)(1) to clarify that the institution must report an account as being in default to a national credit bureau as part of the collection procedures it is required to follow when a defaulted borrower does not respond satisfactorily to the institution's billing procedures under § 674.43.

*Reason:* Some negotiators felt that the current regulations did not clearly state when a borrower's default must be reported to a national credit bureau. The proposed change is intended to eliminate any confusion that exists from the current regulations.

*Perkins Loan—Litigation (Section 674.46)*

*Current Regulations:* Current regulations require institutions to review accounts for litigation at least annually if certain collection efforts set forth in § 674.45 do not result in repayment of the loan. The regulations require the school to, among other things, assess whether the total amount owed, including the outstanding principal, interest, collection costs and late charges, on all the borrower's Perkins loans at the institution is more than $200 and whether it would be cost effective for the institution to litigate the account and sue the borrower. If the institution determines, based upon its annual review, that the required conditions are met, it must sue to recover the debt and all litigation costs from the borrower.

Institutions may bring suit against a defaulted borrower even if the conditions included in the regulation are not met.

*Suggested Change:* Schools participating in the Perkins Loan Program requested that they be allowed more discretion when reviewing overdue accounts for litigation, and that the current litigation threshold amount be raised from $200 to $1000.

*Proposed Regulations:* Two specific changes are proposed for § 674.46. The first change would require institutions to review accounts for litigation once every two years, rather than every year. The second change would increase from $200 to $500 the amount that the institution must use to determine if it must litigate.

*Reason:* The proposal to review accounts for litigation less frequently than annually was recommended by some non-Federal negotiators to reduce the costs and administrative burden associated with conducting these reviews. These non-Federal negotiators stated that their experience shows that two of the factors used to support a decision to litigate, the borrower's assets and income, do not significantly change in the short time between annual reviews.

Several non-Federal negotiators stated that given the costs of litigation, it is not cost-effective to pursue small dollar accounts and recommended that the minimum dollar amount be increased to $700. Other negotiators recommended raising the litigation threshold to $1000. Based upon average loan balance data from NSLDS and our concern that the majority of these accounts should remain subject to litigation as the final due diligence effort, the negotiators agreed to increase the litigation threshold amount from $200 to $500.

*Perkins Loan—Assignment of Loans (Section 674.50)*

*Current Regulations:* Current regulations provide that the Secretary does not accept assignment of a loan if the loan has been cancelled due to the death or total and permanent disability of the borrower. They also require an institution to reimburse its Perkins Loan fund for the entire portion of the outstanding balance on a loan that has been determined by the Secretary to be unenforceable because of an act or omission of the institution or its–agent.

*Suggested Change:* The regulations need to be revised to be consistent with the regulatory requirement that an institution assign a Perkins Loan to the Secretary if the institution has made a preliminary determination that the borrower may qualify for a discharge based on a total and permanent disability. This change conforms the rules on assignment with the revised procedures for handling applications for discharges based on total and permanent disability which became effective July 1, 2002.

In addition, the regulations must be modified to conform to earlier changes that, instead of requiring reimbursement from an institution for loans deemed to be unenforceable, provide that the Secretary may require reimbursement.

*Proposed Regulations:* The proposed regulations would eliminate the provision in § 674.50(e)(4) that states that the Secretary does not accept assignments in cases where the loan was cancelled due to death or total and permanent disability. The proposed change to § 674.50(g)(2) would make it optional for the Secretary to require an institution to reimburse the Perkins Loan fund if an assigned loan is unenforceable because of an act or omission by the institution.

*Reason:* Effective July 1, 2002, under the new disability discharge requirements, when a Perkins Loan school makes a preliminary determination that a borrower is eligible for a discharge of his or her loan obligation, it must assign the loan to the Secretary for further action. The proposed change would also delete references to the assignment of loans after the institution has discharged the

loan due to death. By definition, once a loan has been discharged because of the borrower's death, there is no loan to assign.

The proposed change to § 674.50(g) conforms to an earlier change made in § 674.13, which provides the Secretary with the discretion to determine the circumstances under which reimbursement to the institution's Perkins Loan fund would be appropriate.

**FFEL Program Changes**

*FFEL—Definition of Lender (Section 682.200)*

*Current Regulations:* The current definition of lender in the FFEL Program regulations reflects the statutory restriction that a bank, savings and loan, or credit union which acts as a lender in the program not have the making or holding of student loans as its primary consumer credit function. The regulations provide that to be an eligible lender, a bank, savings and loan, or credit union may not hold FFEL Program loans at any time that total more than one-half of its combined consumer credit loan portfolio. In the case of a bank holding company, the company's wholly-owned subsidiaries as a group may not hold FFEL Program loans at any time that total more than one-half of the subsidiaries' combined consumer credit loan portfolios.

*Suggested Change:* Organizations representing FFEL lenders suggested that the definition of the term ''lender'' be revised to make clear that loans held in trust are not considered part of the trustee lender's consumer credit loan function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit loan portfolio. In addition, in a report titled ''Trustee Arrangements Serve Useful Purposes in Student Loan Market'' (GAO/HEHS–00–170) issued in September 2000, the General Accounting Office (GAO) recommended that we clarify how loans held by a trustee are treated for purposes of the limit on the percentage of a lender's consumer credit loan portfolio may be in student loans. The GAO report did not recommend a particular approach but only recommended that we clarify the application of the rule.

*Proposed Regulations:* The proposed regulations would add a new sentence to the definition of eligible lender that specifies that loans held in trust by a trustee lender are not part of the trustee lender's consumer credit loan function.

*Reason:* This change to the regulations is proposed so that eligible lenders will not be discouraged from serving as trustees for other lenders. A lender's trust department is generally separate from its own student loan department and its other consumer credit functions. Based on this factor, we have determined that including loans held in trust in the calculation of a lender's consumer credit loan portfolio may not give an accurate picture of the extent of the lender's consumer credit function that is represented by the lender's own student loan business. Loans held in trust will be considered instead to be part of the consumer credit function of the beneficial holder of the trust.

*FFEL—Repayment Requirements (Section 682.209)*

*Current Regulations:* Section 682.209 of the FFEL regulations provides that a lender must establish a first payment due date for a Stafford Loan that is not later than 45 days after the borrower's repayment period begins. It also provides that a lender must determine the beginning of the repayment period by using the date that the borrower was no longer enrolled in school, usually as provided by the school. Finally, the regulations provide that a borrower may orally request a repayment period that is less than the minimum 5-year period provided by the HEA, but may only extend the repayment period back to the minimum 5-year period only by a written notice to the lender.

*Suggested Change:* FFEL loan holders suggested that § 682.209 be amended in three ways. First they suggested that lenders be allowed to establish a first payment due date for a Stafford Loan that is not later than 60 days after the borrower's repayment period begins, rather than not later than 45 days after the borrower enters repayment. Second, they wanted the regulations to be changed to reflect non-regulatory guidance issued by the Department that provided that a lender would not be required to recalculate the start of the borrower's repayment period based on a new enrollment status date received from a school if the new date is in the same month and year as the date previously reported by the school. Finally, they suggested that the regulatory requirement that a borrower's notice to the loan holder to change a shorter repayment period to the minimum 5-year period be in writing be removed.

*Proposed Regulations:* The proposed regulations would change the lender's timeframe for establishing a first payment due date for a Stafford Loan borrower who enters initial repayment or reenters repayment at the conclusion of a deferment or forbearance, from 45 days to 60 days after the borrower's repayment begins or resumes.

The proposed regulations would also codify existing Departmental guidance by providing that if a lender receives a revised enrollment status date from a school after it has already provided the borrower with required repayment disclosures, and the new date is within the same month and year as the one previously reported, it may use the previously reported date.

Finally, the proposed regulations would remove the requirement that a borrower who previously asked to repay a loan in less than five years provide a written notice to the lender if the borrower now wishes to extend the repayment to a minimum of five years.

*Reason:* FFEL Program lenders and servicers requested the change in the lender's deadline to establish the first payment due date for Stafford Loan borrowers to provide consistency with similar timeframes that are currently in the regulations for other loans. Consistency in these timeframes reduces system complexity and administrative costs and provides borrowers with additional time after entering repayment to make the first scheduled payment.

FFEL participants cited existing Departmental guidance as the basis for their request that they be allowed to use a previously reported enrollment status change date if a new date reported by a school is within the same month and year. While their proposal would have allowed the use of the first date without regard to whether the lender had provided the borrower with repayment materials, the negotiators ultimately agreed to the proposal with the limitation that the lender could ignore the revised date submitted by the school only if it had already provided the borrower with the repayment disclosure materials.

Finally, to facilitate a borrower's ability to revise his or her repayment schedule quickly and easily from the less than five-year minimum repayment that the borrower previously requested and agreed to, the negotiators supported dropping the requirement that the borrower notify the lender in writing.

*FFEL—Forbearance (Section 682.211)*

*Current Regulations:* The lender and the borrower (or endorser, if applicable) must agree in writing to the terms of a discretionary forbearance and to some mandatory forbearances. If a forbearance involves the postponement of all payments, the lender must notify the borrower or endorser at least once every 3 months to remind the borrower or endorser of the continuing obligation to repay the loan. One of the discretionary

administrative forbearances that lenders may grant is for a period of up to 3 months for a borrower who is affected by a natural disaster.

*Suggested Change:* Members of the FFEL community requested that the regulations be changed, to the extent permitted by the statute, to eliminate the requirement that the borrower or endorser agree in writing to the terms of the forbearance. They also asked that the frequency of notice to a borrower in forbearance be decreased from once every three months to once every six months. Finally, some FFEL participants requested that the regulations be changed to permit a lender, without the Secretary's approval, to grant a discretionary forbearance for a period of up to three months to a borrower whose ability to make payments has been adversely affected by a local or national emergency.

*Proposed Regulations:* The proposed regulations would allow a lender to grant a discretionary forbearance without a written agreement. If the agreement is not in writing, the lender must send the borrower or endorser a notice confirming the terms of the forbearance agreement within 30 days of the agreement.

The proposed regulations would also reduce the frequency with which a lender must contact a borrower who has been granted a forbearance from once every three months to once every six months. In addition, the proposed regulations would specify that the information the lender provides to the borrower about the status of the debt must include: A statement that the borrower continues to have the outstanding obligation to repay the loan, the amount of the unpaid principal balance and any unpaid interest that has accrued on the loan, the fact that interest will accrue on the loan for the full term of the forbearance, and the fact that the borrower may discontinue the forbearance at any time.

Finally, the proposed regulations would authorize the lender to grant a discretionary administrative forbearance if the borrower's ability to repay is adversely impacted by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

*Reason:* The negotiators agreed that a lender should be able to address the needs of borrowers who are having difficulty making payments by granting forbearances without a written forbearance agreement, perhaps as part of a telephone conversation with the borrower. However, because a forbearance agreement amends the repayment terms of the loan, and in some cases could result in increased costs to the borrower, an oral agreement must be followed with a written notice to the borrower or endorser outlining the terms of the forbearance. That notice must be provided within 30 days of the oral agreement.

The negotiators also agreed to change the time between required lender contacts with borrowers in a forbearance from three to six months as long as there also was a requirement that the notification(s) to the borrower include the information noted above.

To ensure that lenders can react quickly during natural disasters, local or national emergencies, and military mobilizations to temporarily relieve borrowers of their repayment obligations without having to contact them first, the proposed regulations would authorize lenders to grant a discretionary administrative forbearance to borrowers for a limited three-month period until lenders can contact the borrowers and determine their ability to resume repayment.

*FFEL—Sovereign Immunity (Section 682.402)*

*Current Regulations:* When an FFEL lender receives notice that a borrower has filed a bankruptcy petition, it must, unless instructed otherwise by the guaranty agency, file a proof of claim with the court within a specified timeframe. Similarly, a guaranty agency is required to file a proof of claim on loans it holds.

*Suggested Change:* To ensure that the regulations do not interfere with a state guaranty agency's right to effectively invoke sovereign immunity as a defense to adversary proceedings seeking discharge or other relief brought in bankruptcy court on loans it holds or has guaranteed, we suggested that the regulations be amended to clearly provide such protection by clarifying that the agency may invoke its rights and may also instruct its lenders not to file a proof of claim.

*Proposed Regulations:* The proposed regulation would provide that a guaranty agency that is a State agency and does not assign to other guaranty agencies loans affected by bankruptcy filings is not required to file a proof of claim on loans it holds and may instruct lenders not to file proof of claims on loans that it guaranteed.

*Reason:* A State guaranty agency that has the protection of sovereign immunity should not be required to take actions, including either filing a proof of claim or accepting assignment of a proof of claim filed by another party, that may be viewed as waiving its sovereign immunity from suit in bankruptcy court. To avoid such contentions, a State guaranty agency should be allowed to instruct its lenders not to file claims.

A State guaranty agency that transfers to another guaranty agency any loans that it already holds as defaulted loans or any loans on which it has received a bankruptcy claim on the other hand, does not need this added protection. The strong public interest in recovering from the borrower any payments made available in the bankruptcy proceeding requires that this proposed change apply only to those State guaranty agencies that do not transfer to another guarantor any loans affected by a bankruptcy filing.

*FFEL—Agency Review of Disability Claims (Section 682.402)*

*Current Regulations:* A guaranty agency must pay an approved claim that is based upon a death, disability, or bankruptcy discharge within 45 days of receipt of the claim from the lender, and a claim that is based upon a closed school or false certification discharge within 90 days.

*Suggested Change:* A number of guaranty agencies suggested that agencies needed additional time to carefully review a claim submitted by a lender for a discharge based upon the total and permanent disability of the borrower. They commended that the regulations be changed to allow the agency up to 90 days to make the determination and, if approved, pay the claim to the lender.

*Proposed Regulations:* The proposed regulations would increase the time period in which a guaranty agency must pay a claim to a lender for a disability discharge from 45 days to 90 days.

*Reason:* The committee agreed with the suggestion for the reason stated above.

**Direct Loan Program Changes**

*Definition of Default for Cohort Default Rate Calculations (Sections 668.183 and 668.193)*

*Current Regulations:* When calculating a school's cohort default rate under the FFEL and Direct Loan programs, the denominator includes those borrowers whose loans entered repayment in the applicable fiscal year. Generally, the numerator includes borrowers from the denominator who defaulted on one or more loans before the end of the following fiscal year. However, the current regulations provide that certain non-defaulted Direct Loan borrowers also be included in the numerator. Specifically, the

regulations require the inclusion in the numerator of any borrower who received a Direct Loan from a proprietary, non-degree granting institution who has been repaying under the Direct Loan Program's income contingent repayment (ICR) plan for 360 days with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan.

*Suggested Change:* During the development of the negotiated rulemaking agenda, a non-Federal negotiator suggested changing the regulations to eliminate the current provision that includes in the numerator of the cohort default rate calculation the group of Direct Loan ICR borrowers discussed above. The non-Federal negotiator contended that the current regulations are unreasonable because they could result in a proprietary, non-degree-granting institution losing its eligibility to participate in the Title IV programs due to a cohort default rate based in part on borrowers who had met their repayment obligations and had not defaulted on their loans.

*Proposed Regulations:* The proposed regulations would make the suggested change. Borrowers included in a proprietary, non-degree-granting institution's cohort who have been repaying their loans under the Direct Loan Program's income-contingent repayment plan for 360 days with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, would not be considered to be in default when calculating the institution's cohort default rate.

If the proposed regulations become final, the first official cohort default rates that would reflect the change would be the official rates for the 2001 fiscal year (FY 01) that the Secretary must publish by September 30, 2003. Therefore, to ensure consistency between the draft FY 01 cohort default rates and the official FY 01 cohort default rates, the Secretary plans to base the draft FY 01 cohort default rate calculation on the provisions of the revised regulations.

*Reason:* The change to the regulations that removes certain Direct Loan ICR borrowers from the numerator of a for-profit non-degree institution's cohort default rate calculation is proposed because such borrowers entered into ICR for a variety of valid reasons and are not in default. Thus, they should not be included in the calculation of an institution's cohort default rate.

*Direct Loans—Expiration of Master Promissory Note (Section 685.102)*

*Current Regulations:* Under current regulations, a Direct Loan Program Master Promissory Note (MPN) expires on the earliest of (1) the date the Secretary or the school receives the borrower's written notice that no additional loans may be disbursed under the MPN, (2) one year after the date of the first anticipated disbursement if no disbursement is made during that 12-month period, or (3) ten years after the date of the first anticipated disbursement.

*Suggested Change:* We suggested changing the current MPN expiration date rules so that instead of being based on the first anticipated disbursement date, the expiration date would be based on the signature or receipt date of the MPN.

*Proposed Regulations:* The proposed regulations would retain the current expiration date provisions for Direct Loan Program MPNs that are processed by the Secretary before July 1, 2003, and would establish new expiration date provisions for MPNs that are processed by the Secretary on or after July 1, 2003. Under the proposed provisions for MPNs that are processed by the Secretary on or after July 1, 2003, a Direct Loan Program MPN would expire on the earliest of (1) the date the Secretary or the school receives the borrower's written notice that no additional loans may be disbursed under the MPN, (2) one year after the date the borrower signed the MPN or the date the Secretary receives the MPN if no disbursements are made under that MPN, or (3) ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN.

*Reason:* The implementation of the Common Origination and Disbursement (COD) System for processing Direct Loans provides the opportunity to make the Direct Loan Program MPN expiration date provisions more consistent with corresponding provisions under the FFEL Program. The FFEL Program provisions base the expiration date on the signature or receipt date of the MPN. The proposed change is also consistent with the MPN expiration date provisions for the Perkins Loan Program that are being proposed in this NPRM.

*Executive Order 12866*

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain 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 this regulatory action, we have determined that the benefits would justify the costs.

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

The Secretary is amending these regulations to reduce administrative burden for program participants, provide benefits to students and borrowers, and to protect the taxpayers' interests. The proposed regulations are fully described elsewhere in this preamble. The Department of Education has estimated that the proposed regulations would have no effect on Federal costs over FY 2002–2006.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 682.209 Repayment of a loan.
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as ''small entities.'' Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL program meet the definition of ''small entities.'' While these lenders and a number of institutions of higher education fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

*Paperwork Reduction Act of 1995*

Sections 668.183, 668.193, 674.16, 674.19, 674.33, 674.34, 674.39, 674.42, 674.43, 674.45, 674.47, 674.50, 682.200, 682.209, 682.210, 682.211, 682.402, 682.405, 682.414, 682.604, 685.212, 685.220, and 685.304 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program.

*Sections 668.183 and 668.193—Definition of Default for Cohort Default Rate Calculations*

The proposed regulations eliminate the current provision that includes in the numerator of the cohort default rate calculation for a proprietary, non-degree-granting institution certain Direct Loan borrowers who are repaying under the income contingent repayment plan. There is no change in the burden hours associated with the affected sections of the regulations as a result of this proposed change because we calculate cohort default rates.

*Section 674.16—Master Promissory Note*

To provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program, we have proposed eliminating the regulatory requirement that a Perkins borrower sign a promissory note for each award year. The adoption of an MPN in the Perkins Loan Program will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. Because institutional use of the Secretary's promissory note in the Federal Perkins Loan program is considered part of normal business practice in administering the Federal Perkins Loan program, there are no burden hours calculated for this section.

*Section 674.19—Retention of Promissory Notes*

The proposed regulation provides that if a promissory note was signed electronically it must be stored electronically in accordance with the record retention requirements of 34 CFR 668.24(d)(3)(i) through (iv). The proposed change would not affect the process for retaining records in the Federal Perkins Loan Program. Therefore, this provision would not add burden hours associated with this section.

*Sections 674.33 and 674.42—Borrower Repayment*

Current regulations would be modified to specify that an institution's responsibility to coordinate minimum monthly repayment amounts with other institutions begins only when the borrower requests such coordination. Because the coordination of minimum monthly accounts is considered to be a normal business practice in the administration of the Federal Perkins Loan Program, the proposed regulation would not affect the burden hours associated with this section.

*Section 674.34—Economic Hardship Deferment*

Under the proposed regulations for economic hardship deferments, the amount of the borrower's monthly payment on a Federal postsecondary education debt scheduled to be repaid in 10 years or less would be the actual monthly payment amount, instead of, as under current regulations, a derived amount produced by converting repayment periods of less than 10 years to standard 10-year repayment periods. These changes do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

*Section 674.39—Rehabilitation of Defaulted Loans*

The proposed regulations would prohibit rehabilitation of loans on which a judgment has been obtained. As a result, institutions would be partially relieved of the current regulatory burden associated with obtaining a newly signed promissory note from the borrower after rehabilitating a loan on which a judgment has been obtained. In addition, an institution would no longer be required to instruct the credit bureau to remove the default from the borrower's credit history. We estimate that 592,000 Perkins Loan borrowers are currently in default. An estimated 5,920 (or 1%) of these borrowers have loans on which a judgment has been obtained. We estimate that it takes approximately 10 minutes (.167 hours) per rehabilitated loan for the institution to have the borrower sign a new promissory note and to instruct the credit bureau to remove the default from the borrower's credit history. Therefore, the proposed change will result in a burden reduction of 989 hours.

*Section 674.42—Copies of Promissory Notes*

The proposed regulations would remove the requirement that an institution provide to each borrower at the exit interview a copy of the borrower's signed promissory note. Instead, institutions would only be required to provide contact information that will allow a borrower to request and receive a copy of the borrower's signed promissory note. The proposed change would reduce burden for institutions because they would no longer be required to provide a copy of the promissory note to all borrowers. Under current regulations, an estimated 600,000 copies of promissory notes were provided to borrowers at an estimated time of 1 minute (.017 hours) per copy.

We expect that under the proposed regulations only about 10 percent of the borrowers will request copies of their notes. Therefore, the proposed change would result in 540,000 fewer notes needing to be distributed with a burden reduction of 9,180 hours.

*Section 674.42—Exit Counseling*

The proposed regulations revise the Perkins counseling regulations to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. There is no change in the burden hours associated with this section of the regulations as a result of this proposed change because the current burden estimate reflects the counseling that must be provided to borrowers regardless of whether a school, or a party on behalf of a school, provides the counseling.

The proposed regulations also revise the information that must be disclosed to borrowers through counseling to be consistent with the Direct Loan and FFEL program counseling regulations. These revisions include new information that must be disclosed to borrowers through counseling. The revisions and additions do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

*Section 674.43—Late Charges*

The proposed regulations would amend § 674.43(b)(2) by making the institution's assessment of late charges optional in the Federal Perkins Loan Program. An institution that adopts a policy of assessing late charges would be required to assess them to all borrowers with overdue payments. The proposed regulation would reduce burden hours in this section because some institutions will choose not to adopt a policy of assessing late charges and, therefore, would not be required to respond to borrower inquires and complaints concerning the imposition of those charges. There are currently an estimated 2000 institutions that participate in the Federal Perkins Loan Program. We estimate that 200 (or 10%) of these institutions will choose not to assess late charges. We approximate that, on average each of those institutions spends one hour per month (12 hours per year) communicating with borrowers about the late charge. As a result, the proposed change would result in a burden reduction of 2400 hours.

*Section 674.45—Credit Bureau Reporting*

The proposed provisions governing credit bureau reporting in § 674.45(a)(1) would be revised to clarify that the institution would report an account as being in default to a national credit bureau as part of the collection procedures that follow the billing procedures in § 674.43.

Because credit bureau reporting is considered to be a normal business practice in the administration of the Federal Perkins Loan Program, the proposed regulation would not affect the burden hours associated with this section.

*Section 674.47—Write-offs*

The proposed regulations would allow an institution to write-off account balances of less than $25 and, if the borrower has been billed for at least two years, balances of less than $50. The proposed regulations would also add new language making it clear that a borrower whose balance has been written off is relieved of all repayment obligations. The proposed regulations would reduce burden for institutions because they would no longer be required to pursue collection of defaulted accounts with low balances. We estimate that 592,000 Perkins Loan borrowers are currently in default. An estimated 5920 (or 1%) of these borrowers would be eligible for write-off under the proposed regulations. We estimate that performing collection procedures on an overdue account takes 1 hour (1.00 hours) per borrower. Therefore, the proposed change will result in a burden reduction of 5,920 hours.

*Section 674.50—Assignment of Loans*

Two changes have been proposed for this section. The first change would conform the regulations to the requirement that an institution assign a loan to the Department when it makes a preliminary determination that the borrower qualifies for a total and permanent disability discharge on the loan. The second change conforms to an earlier change made in § 674.13, which provides the Secretary with the discretion to determine the circumstances under which reimbursement to the institution's Federal Perkins Loan fund would be appropriate. Because the proposed amendments in this section are technical conforming changes to earlier regulatory changes, we have determined that there are no burden hours associated with this section.

*Section 682.200—Definitions*

The proposed regulations would revise the definition of *Lender* to clarify that loans held in trust are not considered part of a trustee lender's consumer credit function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit loan portfolio. The revision to the definition does not change the burden hours associated with this section of the regulations because there is no burden currently associated with this provision.

*Section 682.209—Repayment of a Loan*

The proposed regulations would reduce burden on lenders by permitting them to establish first payment due dates for Stafford loan borrowers within 60 days following certain events instead of within 45 days under current requirements. As a result of these proposed regulations, the Stafford loan repayment due dates would be the same as those generally permitted for the PLUS and Consolidation loan programs, although the starting dates that trigger the 60-day deadline are different in the three programs. Since lenders would, under the proposed rule, simply re-set their computer systems and send out the same number of billings, there is no significant burden reduction as a result of this change.

*Sections 682.210 and by Reference, 685.204—Deferment*

The proposed regulations would affect the ability of borrowers to qualify for unemployment and economic hardship deferments. Current regulations require certain borrowers to provide job-search documentation to the lender. The proposed regulations would permit those borrowers to qualify for an unemployment deferment without providing specific details of their job searches.

For economic hardship deferments, the amount of the borrower's monthly payment on a Federal postsecondary education debt scheduled to be repaid in 10 years or less would be the actual monthly payment amount, instead of, as under current regulations, a derived amount produced by converting repayment periods of less than 10 years to a standard 10-year calculation. Because those derived amounts are generally lower than the actual monthly repayment amounts and will no longer be used if a borrower's loans are scheduled to be repaid in 10 years or less, more borrowers should qualify for economic hardship deferments.

These revisions do not change the burden hours associated with this

section of the regulations because the burden associated with the current requirement is associated with the forms that borrowers use to request unemployment and economic hardship deferments.

*Section 682.211—Forbearance*

The proposed regulations would decrease the required frequency of lender contacts with certain borrowers in forbearance from once every 3 months to once every 6 months. However, to compensate for this less frequent communication, the lender would be required to enhance some of the information it provides to the borrower about the status of the borrower's loan balance. Taken together, these two changes appear to cancel each other out and result in no net increase in burden to the lender.

*Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments*

The proposed regulations would provide that a guaranty agency that is a state agency is not required to file a proof of claim and it may instruct lenders not to file proof of claims on loans that it guaranteed.

The proposed regulations would change the timeframe in which a guaranty agency must pay a claim to a lender for a disability discharge from 45 days to 90 days.

These revisions do not change the burden hours associated with this section of the regulations.

*Section 682.405—Loan Rehabilitation Agreement*

The proposed regulations would prohibit rehabilitation of loans on which a judgment has been obtained. Because guaranty agencies would no longer permit the rehabilitation of these debts, lenders and guaranty agencies would be relieved of the current regulatory burden associated with obtaining a newly signed promissory note from the borrower prior to the sale of a rehabilitated judgment debt. However, this change does not impact the burden hours associated with this section of the regulations because there is no burden currently associated with this provision.

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

The proposed regulations state that if a promissory note was signed electronically it must be stored electronically in accordance with record retention requirements of 34 CFR 668.24. This revision is a clarification of current regulations, and has no effect on the burden hours associated with this section.

*Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers*

The proposed changes would update the counseling requirements to ensure consistency among the FFEL, Perkins, and Direct Loan programs, and would clarify that parties other than the school may provide the counseling. There is no change in the burden hours because the current burden hour estimate reflects counseling that must be provided to borrowers regardless of whether the counseling is provided by the school itself, or a party on behalf of the school.

*Section 685.212—Discharge of a Loan Obligation and Section 685.220 —Consolidation*

The proposed regulations specify that if a Direct Consolidation Loan includes a PLUS loan obtained for a student who died, the portion of the Direct Consolidation Loan attributable to that PLUS loan is discharged. The proposed regulations also provide for the discharge of the applicable portion of a Direct Consolidation Loan that is obtained jointly by two married borrowers if one of the borrowers dies or becomes totally and permanently disabled. There is no change in the burden hours associated with the affected sections of the regulations as a result of these proposed changes because the slight increase in the number of borrowers who will be eligible to apply for these benefits is sufficiently covered by the current burden estimates for the affected sections.

*Section 685.304—Counseling Borrowers*

The proposed regulations revise the counseling regulations to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. This proposed change makes the regulations consistent with longstanding guidance that has allowed another party to provide counseling for a school, as long as the school ensured that the counseling was provided and included all of the necessary information. There is no change in the burden hours associated with this section of the regulations as a result of this proposed change because the current burden estimate reflects the counseling that must be provided to borrowers regardless of whether a school or a party on behalf of a school provides the counseling.

The proposed regulations also revise the information that must be disclosed to borrowers through counseling to be consistent with the Perkins Loan and FFEL program counseling regulations. These revisions include two new pieces of information that must be disclosed to borrowers through counseling. The revisions to the disclosure requirements do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

**List of Subjects**

*34 CFR Part 668*

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

*34 CFR 674, 682 and 685*

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

Dated: July 25, 2002.

**Rod Paige,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.35 is amended:

A. In paragraph (a)(2), by adding new introductory text.

B. By redesignating paragraphs (b), (c), (d), (e), and (f) as (d), (e), (f), (g), and (h) respectively.

C. By adding new paragraphs (b) and (c).

The revision and additions read as follows:

### § 668.35 Student debts under the HEA and to the U.S.

(a) * * *

(2) Except as limited by paragraph (c) of this section—

* * * * *

(b) A student who is subject to a judgment for failure to repay a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the debt in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(c) A student may reestablish eligibility under paragraph (a)(2) or (b)(2) of this section only once. For example, a student who reestablishes eligibility under paragraph (a)(2) may not reestablish eligibility under paragraph (b)(2).

* * * * *

### § 668.183 [Amended]

3. Section 668.183(c)(1) is amended as follows:

A. In paragraph (c)(1)(ii), by adding ''or'' after the semi-colon.

B. By removing paragraph (c)(1)(iii).

C. By redesignating paragraph (c)(1)(iv) as (c)(1)(iii).

### § 668.193 [Amended]

4. Section 668.193 is amended:

A. In paragraph (d)(1), by removing the last sentence.

B. By removing paragraph (f)(3).

## PART 674—FEDERAL PERKINS LOAN PROGRAM

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

**Authority:** 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421–429 unless otherwise noted.

6. Section 674.2(b) is amended:

A. By revising the definition of ''Making of a loan''.

B. By adding, in alphabetical order, a new definition of ''Master Promissory Note (MPN)''.

The revision and addition read as follows:

### § 674.2 Definitions.

* * * * *

(b) * * *

*Making of a loan:* When the institution makes the first disbursement of a loan to a student for an award year.

*Master Promissory Note (MPN):* A promissory note under which the borrower may receive loans for a single award year or multiple award years.

* * * * *

### § 674.9 [Amended]

7. Section 674.9 is amended:

A. By removing paragraph (g).

B. By redesignating paragraphs (h), (i), (j), (k) and (l) as (g), (h),(i), (j) and (k) respectively.

C. In newly redesignated paragraph (g)(3), by removing ''(h)(1) and (h)(2)'' and adding, in its place, ''(g)(1) and (g)(2)''; and by removing the period at the end of the last sentence and adding, in its place, a ''; and''.

8. Section 674.16 is amended:

A. By revising paragraph (d)(2).

B. By adding a new paragraph (d)(3).

The revision and addition read as follows:

### § 674.16 Making and disbursing loans.

* * * * *

(d) * * *

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses the Master Promissory Note (MPN), the institution's ability to make additional loans based on an MPN will automatically expire upon the earliest of—

(i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or

(iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

### § 674.17 [Amended]

9. Section 674.17 is amended:

A. In paragraph (a), by removing in the introductory text ''one or more of''.

B. By removing paragraph (a)(2).

C. By redesignating paragraph (a)(3) as paragraph (a)(2).

D. In redesignated paragraph (a)(2), by removing ''transfer'' and adding, in its place, ''assignment''; and by removing ''Department of Education'' and adding, in its place, ''United States''.

E. In paragraph (b), by removing ''transfers'' and adding, in its place, sbull I11''assigns''.

F. By removing paragraphs (c), (d), and (e).

10. Section 674.19(e)(4) is revised to read as follows:

**§ 674.19 Fiscal procedures and records.**

* * * * *

(e) * * *

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) The institution shall retain a promissory note that was signed by the borrower electronically in accordance with 34 CFR 668.24(d)(3)(i) through (iv).

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked ''paid in full'' to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

11. Section 674.33(b) is amended as follows:

A. By revising the introductory text following the heading in paragraph (b)(2).

B. By revising the text following the heading of paragraph (b)(3).

The revisions read as follows:

**§ 674.33 Repayment.**

* * * * *

(b) * * *

(2) * * * If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

* * * * *

(3) * * * If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to the other institutions, and if the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

* * * * *

12. Section 674.34(e)(10) is revised to read as follows:

**§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.**

* * * * *

(e) * * *

(10) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e)(5) of this section, the institution shall—

(i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or

(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

* * * * *

**§ 674.39 [Amended]**

13. Section 674.39(a) is amended as follows:

A. In the first sentence of the introductory text in paragraph (a), by adding '', except for loans for which a judgment has been secured'' after ''part''.

B. In paragraph (a)(2), by removing ''; and'' and adding, in its place, a period.

C. By removing paragraph (a)(3).

14. Section 674.42 is amended:

A. By revising paragraph (a)(10).

B. By adding a new paragraph (a)(11).

C. By revising paragraph (b)(1) and the introductory text in paragraph (b)(2).

D. In paragraph (b)(2)(i), by removing ''that'' and adding, in its place, ''the''.

E. By revising paragraph (b)(2)(iii).

F. In paragraph (b)(2)(v), by removing ''in forceful terms''.

G. In paragraph (b)(2)(vii), by removing ''with'' and adding, in its place, ''for''.

H. In paragraph (b)(2)(viii), by removing ''corrections to the institution's records'' and adding, in its place, ''current information''; and by removing ''and'' following the semi-colon.

I. In paragraph (b)(2)(ix), by removing ''with'' and adding, in its place, ''for''; and by removing the period and adding, in its place, ''; and''.

J. By adding a new paragraph (b)(2)(x).

K. By removing paragraph (b)(3).

L. By redesignating paragraphs (b)(4) and (b)(5) as (b)(3) and (b)(4) respectively.

M. By revising newly redesignated paragraph (b)(3).

The revisions and additions read as follows:

**§ 674.42 Contact with the borrower.**

(a) * * *

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) * * * (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling material by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) The exit counseling must—

* * * * *

(iii) Suggest to the borrower debt-management strategies that would facilitate repayment;

* * * * *

(x) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and

participates in and completes the exit counseling.

* * * * *

**§ 674.43 [Amended]**

15. Section 674.43(b)(2) is amended in the introductory text by removing ''shall'' and adding, in its place, ''may''.

**§ 674.45 [Amended]**

16. Section 674.45(a)(1) is amended by removing ''defaulted account'' and adding, in its place, ''account as being in default''.

**§ 674.46 [Amended]**

17. Section 674.46(a)is amended as follows:

A. In the introductory text of paragraph (a)(1), by removing ''annually'' and adding, in its place, ''once every two years''.

B. In paragraph (a)(1)(i), by removing ''$200'' and adding, in its place, ''$500''.

18. Section 674.47 is amended:

A. By removing paragraph (g)(1).

B. By redesignating paragraphs (g)(2), (g)(2)(i), and (g)(2) (ii) as paragraph (g) introductory text, paragraph (g)(1), and paragraph (g)(2) respectively.

C. In newly redesignated paragraph (g)(1), by removing the last ''the'' and adding, in its place, ''this''.

D. In the paragraph (h) heading, by removing ''of less than $5''.

E. By revising paragraph (h)(1).

F. By adding a new paragraph (h)(3).

The revision and addition read as follows:

**§ 674.47 Costs chargeable to the Fund.**

* * * * *

(h) * * *

(1) Notwithstanding any other provision in this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than $25; or

(ii) Less than $50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).

* * * * *

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

**§ 674.50 [Amended]**

19. Section 674.50 is amended:

A. In paragraph (e)(2)(ii), by adding ''or'' after the semicolon.

B. In paragraph (e)(3), by deleting ''; or'' at the end of paragraph and adding, in its place, a period.

C. By removing paragraph (e)(4).

D. In paragraph (g)(2), by adding ''Secretary may require the'' after ''The''; and by removing ''shall'' and adding, in its place, ''to''.

## PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

**§ 682.200 [Amended]**

21. Section 682.200(b) is amended:

A. By adding a sentence at the end of the definition of ''Lender'' in paragraph (b)(2)(ii) to read as follows: ''For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.''

B. Revise the definition of ''Master promissory note (MPN)'' to read ''Master Promissory Note (MPN)''.

22. Section 682.204 is amended by adding new paragraphs (a)(8), (a)(9), (d)(7), and (d)(8) to read as follows:

**§ 682.204 Maximum loan amounts.**

(a) * * *

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

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

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

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

* * * * *

(d) * * *

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

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

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

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

* * * * *

23. Section 682.209(a) is amended by:

A. Removing the number ''45'' each time it appears in paragraphs (a)(3)(ii), (A), (a)(3)(ii)(B), and (a)(3)(ii)(C), and adding, in its place, the number ''60''.

B. Adding a new paragraph (a)(3)(iii).

C. Revising the last sentence in paragraph (a)(8)(iv).

The revisions and addition read as follows:

**§ 682.209 Repayment of a loan.**

(a) * * *

(3) * * *

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

* * * * *

(8) * * *

(iv) * * * Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

* * * * *

24. Section 682.210 is amended by revising paragraphs (h)(2), (h)(3)(iv), (h)(4), (s)(6)(vii), and (s)(6)(ix) to read as follows:

**§ 682.210 Deferment.**

* * * * *

(h) * * *

* * * * *

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

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within

a 50-mile radius of the borrower's current address; and

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

(3) * * *

* * * * *

(iv) A borrower requesting an initial period of unemployment deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower's request, and may be granted for up to 6 months after that date.

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

* * * * *

(s) * * *

(6) * * *

* * * * *

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and

(v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

* * * * *

25. Section 682.211 is amended by:

A. Revising paragraphs (b), (c), and (e).

B. Amending the introductory text of paragraph (f) by adding the words ''or would be due'' after the word ''overdue''.

C. Amending paragraph (f)(2) by removing the reference to paragraph ''(f)(10)'' and adding, in its place, ''(f)(11)''.

D. Revising paragraph (f)(11).

E. Redesignating paragraph (h)(3) as paragraph (h)(4).

F. Adding a new paragraph (h)(3).

The revisions and addition read as follows:

**§ 682.211 Forbearance.**

* * * * *

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

* * * * *

(e) Except in the case of forbearance of interest payments during a deferment period if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser at least once every six months during the period of forbearance to inform the borrower or endorser of—

(1) The outstanding obligation to repay;

(2) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan;

(3) The fact that interest will accrue on the loan for the full term of the forbearance; and

(4) The borrower or endorser's option to discontinue the forbearance at any time.

(f) * * *

(11) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

* * * * *

(h) * * *

(3) *Written agreement.* The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

* * * * *

**§ 682.402 [Amended]**

26. Section 682.402 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

B. Adding a new paragraph (a)(2).

C. Amending newly redesignated paragraph (a)(3) by removing the words ''or a Consolidation loan was obtained by a married couple,''.

D. Amending newly redesignated paragraph (a)(5)(iii) by removing the reference to paragraph ''(a)(4)(i) or (ii)'' and adding, in its place, ''(a)(5)(i) or (ii)''.

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

F. Revising paragraph (f)(4).

G. Revising paragraph (g)(1)(i).

H. Revising paragraph (h)(1)(i).

I. Revising paragraph (h)(3)(iii).

The revisions and additions read as follows:

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

(a) * * *

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan attributable to any of that borrower's loans that would have been eligible for discharge.

* * * * *

(b) * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any

endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

* * * * *

(f) * * *

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

* * * * *

(g) * * *

(1) * * *

(i) The original or a true and exact copy of the promissory note.

* * * * *

(h) * * *

(1) * * *

(i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

* * * * *

27. Section 682.405 is amended by:

A. Adding the words ‘‘, except for loans for which a judgment has been obtained,’’ after ‘‘defaulted loans’’ in paragraph (a)(1).

B. Removing paragraph (a)(4).

C. Revising the fifth sentence in paragraph (b)(1).

The revision reads as follows:

**§ 682.405 Loan rehabilitation agreement.**

* * * * *

(b) * * *

(1) * * * Voluntary payments are those made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. * * *

* * * * *

28. Section 682.414 is amended by revising paragraph (a)(5)(ii) to read as follows:

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

(a) * * *

(5) * * *

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it in accordance with 34 CFR 668.24(d)(3)(i) through (iv).

* * * * *

29. Section 682.604 is amended by:

A. Revising paragraph (f)(1).

B. Revising the introductory text of paragraph (f)(2).

C. Revising paragraph (f)(2)(iii).

D. In paragraph (f)(2)(iv), removing the period and adding, in its place, ‘‘; and’’.

E. Adding a new paragraph (f)(2)(v).

F. Revising paragraph (f)(3).

G. Revising paragraph (g)(1).

H. Revising paragraph (g)(2).

I. Revising paragraph (g)(3).

The revisions and addition read as follows:

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

* * * * *

(f) * * *

(1) A school must ensure that initial counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds.

(2) The initial counseling must—

* * * * *

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

* * * * *

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers at the same school.

(3) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(g) * * *

(1) A school must ensure that exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who

have obtained Stafford or SLS loans for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options, including standard, graduated, extended, and income-sensitive repayment plans and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vi) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(vii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

* * * * *

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

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

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

31. Section 685.102(b) is amended by revising the definition of ''Master Promissory Note (MPN)'' to read as follows:

### § 685.102 Definitions.

* * * * *

(b) * * *

*Master Promissory Note (MPN):* (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

32. Section 685.203 is amended:

A. By adding new paragraphs (a)(8) and (a)(9).

B. By adding new paragraphs (c)(2)(viii) and (c)(2)(ix).

The additions read as follows:

### § 685.203 Loan limits.

(a) * * *

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

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

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

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

* * * * *

(c) * * *

(2) * * *

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

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

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

* * * * *

### § 685.211 [Amended]

33. Section 685.211(f) is amended by adding, in the first sentence after the paragraph heading, '', except for a loan on which a judgment has been obtained,'' after ''Loan''.

34. Section 685.212(a) is amended by adding a new paragraph (3) to read as follows:

### § 685.212 Discharge of a loan obligation.

(a) * * *

(3) In the case of a Direct PLUS Consolidation Loan, the Secretary discharges the portion of the outstanding balance of the consolidation loan attributable to any Direct PLUS Loan or Federal PLUS Loan that was obtained on behalf of a student who dies and that was repaid by the consolidation loan.

* * * * *

35. Section 685.220(l)(3) is revised to read as follows:

### § 685.220 Consolidation.

* * * * *

(1) * * *

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges

the portion of the outstanding balance of the consolidation loan attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges the portion of the outstanding balance of the consolidation loan attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

36. Section 685.304 is amended:

A. By revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5).

B. In paragraph (b)(1), by removing ''conduct'' and adding, in its place, ''ensure that''; by adding ''is conducted'' after ''counseling''; and by adding ''Loan'' after ''Subsidized''.

C. In paragraph (b)(2), by adding, in the first sentence, ''exit'' after ''The''; by removing, in the second sentence, ''knowledge of'' and adding, in its place, ''expertise in''; by removing, in the last sentence, ''the school may provide''; and by adding, in the last sentence, ''may be provided'' after the second occurrence of ''borrower''.

D. In paragraph (b)(3), by removing ''school must provide''; and by adding ''must be provided'' after the second occurrence of ''counseling''.

E. By revising paragraph (b)(4).

F. By revising paragraph (b)(5).

G. By redesignating paragraph (b)(6) as (b)(7).

H. By adding a new paragraph (b)(6).

The revisions and addition read as follows:

**§ 685.304 Counseling borrowers.**

(a) * * * (1) Except as provided in paragraph (a)(4) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(3) The initial counseling must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

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

(iv) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school;

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

* * * * *

(5) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(b) * * *

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of Direct Subsidized Loan or Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(ix) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

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