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Department of Education

34 CFR Parts 674, 682, and 685

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0004]

34 CFR Parts 674, 682, and 685

RIN 1840–AC98

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 Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA).

DATES: We must receive your comments on or before August 24, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.*

If you mail or deliver your comments about these proposed regulations, address them to Pamela Moran, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, U.S. Department of Education, 1990 K Street, NW., Room 8033, Washington, DC 20006–8502. Telephone: (202) 502–7732 or via the Internet at: *pamela.moran@ed.gov*.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible 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

As outlined in the section of this notice entitled ''*Negotiated Rulemaking,''* significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before August 24, 2009. 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 the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. 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.

As noted elsewhere in this NPRM, two of the Department's negotiated rulemaking committees considered proposed revisions to 34 CFR 674.51, Special Definitions, in Subpart D of the Federal Perkins Loan Program regulations. Team I—Loans-Lender General Loan Issues, the negotiating committee responsible for regulations involving issues related to lender and general loan issues, negotiated the proposed definitions of ''substantial gainful activity'' and ''permanent and total disability.'' Team II—Loans-School-based Loans Issues negotiated all other changes in this section.

We have included all proposed changes to 34 CFR 674.51 in this NPRM as well as in the NPRM that we are publishing as a result of the negotiations of Team II—School-based Loans Issues. However, we ask that when submitting your comments on the proposed changes to 34 CFR 674.51, you submit any comments on the proposed definitions of ''substantial gainful activity'' and ''total and permanent disability'' in the docket (Docket ID ED–2009–OPE–0004) for this NPRM. Comments on all other provisions in this section should be submitted in the docket (Docket ID ED–2009–OPE–0003) for the Team II—School-based Loans Issues NPRM.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in Room 8033, 1990 K Street, NW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. Eastern Time, Monday through Friday of each week except Federal holidays.

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 the public, including individuals and representatives of groups involved in the Federal student assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On September 8, 2008, the Department published a notice in the **Federal Register** (73 FR 51990) announcing our intent to establish negotiated rulemaking committees to develop proposed regulations to (1) implement the changes made to the HEA by the Higher Education Opportunity Act of 2008 (HEOA, Pub. L. 110–315) that affected programs authorized under title IV of the HEA, and (2) possibly address the provision added to section 207(c) of the HEA by the HEOA regarding the prohibition on a teacher preparation program from which the State has withdrawn approval or terminated financial support from accepting or enrolling any student who received title IV aid.

On December 31, 2008, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish up to five negotiated rulemaking committees to prepare proposed regulations. The notice indicated that no requests from the public were received to negotiate the provision added to section 207(c) of the HEA. The Secretary determined it was not necessary to issue regulations in that area and therefore did not submit that issue to a negotiated rulemaking committee. The five committees that were established were: (1) A committee on lender and general loan issues (Loans Team I); (2) a committee on school-based loan issues (Loans Team II); (3) a committee on accreditation; (4) a committee on discretionary grant programs; and (5) a committee on general and non-loan programmatic issues. The notice informed the public that, due to the large volume of changes made by the HEOA that needed to be implemented through negotiated rulemaking, not all provisions would be addressed during this round of committee meetings. The notice requested nominations of individuals for membership on the committees who could represent the interests significantly affected by the proposed regulations and had demonstrated expertise or experience in the relevant subjects under negotiation.

Loans Team I met in three sessions to develop proposed regulations: Session 1, February 23–25, 2009; session 2, March 30–April 1, 2009; and session 3, May 4–6, 2009. These proposed regulations relate to the administration of the Federal student loan programs. This NPRM resulted primarily from the work of Loans Team I and, in a couple of instances where the subject matter of the proposed regulations overlapped, the work of Loans Team II.[1]

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on:

- September 19, 2008, at the Texas Christian University, in Fort Worth, Texas.
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island.
- October 2, 2008, at the Pepperdine University, in Malibu, California.
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina.
- October 8, 2008, at the U.S. Department of Education, in Washington, DC.
- October 15, 2008, at Cuyahoga Community College, in Warrensville Heights, Ohio.

In addition, the Department accepted written comments on possible regulations submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.* The Department also identified issues for discussion and negotiation.

At its first meeting, the Loans Team I Committee reached agreement on its protocols and proposed agenda. The agenda included the statutory changes identified for the Committee's consideration. In addition, at the second meeting of the Committee, the negotiators agreed by consensus to add two additional agenda items affecting the determination of eligibility and calculation of borrower payment amounts under the income-based repayment plan in the FFEL and Direct Loan programs that becomes available to borrowers on July 1, 2009.

The Loans Team I Committee members (and the organizations they represented) included the following:

- *Representing students:* Jonathan S. Sachs, primary, and Adam Briones, alternate (U.S. Public Interest Research Group; United States Student Association; University of Maryland Student Government Association; The Greenlining Institute);
- *Representing legal assistance organizations that represent students and borrowers:* Deanne Loonin, primary, and Lauren Saunders, alternate (National Consumer Law Center);
- *Representing 2-year public institutions:* George Chin, primary (American Association of State Colleges and Universities);
- *Representing 4-year public institutions:* Carrie Steere-Salazar, primary, and Kris Wright, alternate (Association of American Medical Colleges; National Direct Loan Coalition);
- *Representing private, nonprofit institutions of higher education:* Heather McDonnell, primary, and Bonnie Lee Behm, alternate (National Association of Student Financial Aid Administrators; Pennsylvania Association of Student Financial Aid Administrators);
- *Representing private, for-profit institutions of higher education:* Thomas A. Babel, primary, and William Leach, alternate (DeVry University; Career College Association);
- *Representing guaranty agencies:* Mary Mowdy, primary, and Dick George, alternate (Oklahoma State Regents for Higher Education; National Council of Higher Education Loan Programs (NCHELP));
- *Representing for-profit lenders:* Brenda Dillon, primary, and Tom Levandowski, alternate (NCHELP; Consumer Bankers Association);
- *Representing not-for-profit lenders:* Cheryl Hughes, primary, and Scott Giles, alternate (NCHELP; Education Finance Council (EFC));
- *Representing credit unions:* Michael Kim, primary, and Rhonda Summerbell, alternate (Coalition of the following credit unions: University Federal Credit Union, USC Credit Union, UW Credit Union, Navy Federal Credit Union, Notre Dame Federal Credit Union);
- *Representing lender servicers:* Diane Freundel, primary, and Wanda Hall, alternate (EFC; NCHELP; Student Loan Servicing Alliance); and
- *Representing the U.S. Department of Education:* Pam Moran.

The Committee's protocols provided that the committee would operate by consensus, meaning there must be no dissent by any member in order for the committee to be considered to have reached agreement. Under the protocols, if the Committee reaches final consensus on all issues, the Department will use the consensus-based language in the proposed regulations and committee members and the

[1] As discussed elsewhere in this preamble, Loans Team II was responsible for negotiating the following provisions, which appear in this NPRM: 34 CFR 674.51, definitions of the terms *child with a disability, community defender organizations, educational service agency, faculty member at a Tribal College or University, Federal public defender organization, firefighter, infant or toddler with a disability, librarian with a master's degree, speech language pathologist with a master's degree,* and *Tribal College or University.*

organizations whom they represent will refrain from commenting negatively on the package, except where provided for in the agreed upon protocols.

During its meetings, the Loans Team I Committee reviewed and discussed drafts of the proposed regulations. At the final meeting in May 2009, the Committee reached consensus on the proposed regulations in this document, with the exception of those definitions included in 34 CFR 674.51 that were negotiated by Loans Team II, as discussed elsewhere in this notice.

In addition to the proposed regulations considered by Loans Team I, this NPRM also includes some additional definitions that appear in 34 CFR 674.51 (Special Definitions). Only the definitions of ''substantial gainful activity'' and ''total and permanent disability'' were included in the proposed regulations agreed to by Loans Team I. The remaining definitions in this section were added or amended as part of the negotiations of Loans Team II, but are being included here to provide context for the changes to this section.

Team I and Team II were advised that, to ensure transparency and ease of use for public commenters, the Department would propose the entirety of 34 CFR part 601 in a single NPRM. Given Team I's consensus, which included consensus on the definitions of the terms *lender* and *private education loan* in proposed § 601.2 as well as the requirements in § 601.40, Team I members were advised that they may not comment negatively on the provisions they negotiated notwithstanding that they would appear in Team II's NPRM. Likewise, Team II members were advised that, while they may not comment negatively on the majority of proposed 34 CFR part 601 as a result of their consensus agreement, they may comment on the definitions of *lender* and *private education loan* as well as proposed § 601.40.

With regard to the proposed changes to § 674.51, the Department determined that it would be helpful for the public to be able to view all proposed changes to this special definitions section for the Perkins Program in both Team I's NPRM and Team II's NPRM. Team I and Team II were advised that the proposed changes to § 674.51 would appear in their entirety in both documents to provide context and enhance understanding of both committees' proposed changes to this section. Each team was advised by its respective Federal negotiator that its consensus agreement did not apply to the definitions negotiated by the other team and that any comments they may have on the definitions negotiated by the other team should be submitted in response to the NPRM published as a result of the other team's negotiations.

More information on the work of Team I can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-lender.html* and more information on the work of Team II can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-school-based.*

Summary of Proposed Changes

These proposed regulations would implement general and lender-based loan provisions of the HEA, as amended by the HEOA, that include:

- A revised definition of ''totally and permanently disabled'' for purposes of discharging a borrower's title IV loans and a revised disability discharge process;
- Expansion of the conditions under which a borrower with only FFEL loans may consolidate those loans into a Direct Consolidation Loan;
- Additional disclosures for FFEL and Direct consolidation loan applicants, and a new requirement for FFEL Consolidation loan lenders to notify borrowers who have applied for a Consolidation loan that they may cancel the loan within a specified time period;
- An additional method for granting in-school deferments on FFEL or Direct Loan program loans, and a new notification requirement for FFEL lenders when granting a borrower a deferment on an unsubsidized loan;
- New in-school deferment provisions for PLUS loan borrowers and related changes to administrative forbearance provisions;
- Clarification of PLUS loan interest capitalization provisions;
- A revised definition of ''partial financial hardship'' for purposes of determining eligibility for the income-based repayment (IBR) plan in the FFEL and Direct Loan programs, and revised regulations for determining the IBR payment amount;
- An expansion of the eligibility requirements for teacher loan forgiveness in the FFEL and Direct Loan programs to allow borrowers who perform qualifying teaching service at an eligible educational service agency to receive forgiveness;
- A revision of the regulations related to loan rehabilitation to provide that a FFEL or Direct Loan borrower may rehabilitate a defaulted loan only once;
- Revisions to the regulations governing prohibited inducements by guaranty agencies and lenders in the FFEL Program;
- Revised and expanded disclosure requirements for FFEL Program lenders at the time of or prior to loan disbursement and during the loan repayment period;
- An expansion of the information that must be provided to a FFEL borrower when the transfer, sale, or assignment of the borrower's loan results in a change in the identity of the party to whom payments and communications must be sent;
- Revised forbearance disclosure requirements related to interest capitalization for FFEL lenders;
- Revised regulations related to the audit requirements for a FFEL school lender or an eligible lender trustee that originates FFEL loans for a school or school-affiliated organization;
- A new requirement for guaranty agencies to work with the schools that they serve to develop and make available to students and their families consumer education materials related to budgeting and financial management;
- A new requirement for guaranty agencies to make available certain financial and economic education materials to borrowers who have rehabilitated defaulted loans;
- Revised consumer credit reporting requirements for guaranty agencies and prior loan holders after a borrower has rehabilitated a defaulted loan; and
- Revised requirements related to the notifications that guaranty agencies must send to borrowers with defaulted loans.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses, beginning with issues that apply to all three title IV loan programs, followed by issues that apply to the FFEL and Direct Loan programs, and then issues that apply only to the FFEL Program. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Total and Permanent Disability Loan Discharges

Definitions (§§ 674.51 and 682.200(b))

Statute: Prior to the enactment of the HEOA, the HEA provided that a Perkins Loan, FFEL, or Direct Loan could be discharged if the borrower had a total and permanent disability as determined in accordance with the regulations of the Secretary. The HEOA amended sections 437(a) and 464(c)(1)(F) of the HEA to provide for the discharge of a borrower's title IV loans if the borrower becomes totally and permanently disabled in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months.

The HEOA further amended sections 437(a) and 464(c)(1)(F) of the HEA by establishing a separate total and permanent disability standard for certain veterans. Specifically, the HEA now provides that a borrower who is a military veteran is considered totally and permanently disabled for title IV loan discharge purposes if the borrower provides documentation showing that he or she has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability. A borrower who provides such documentation is not required to present additional documentation for purposes of establishing eligibility for loan discharge based on total and permanent disability.

Current Regulations: The current regulations governing the Perkins, FFEL, and Direct Loan programs define ''total and permanent disability'' as the condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. Current regulations do not define ''substantial gainful activity.''

Proposed Regulations: Proposed §§ 674.51(aa) and 682.200(b) would define total and permanent disability as the condition of an individual who: (1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months; or (2) is a veteran and who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

The proposed regulations would also add a definition of substantial gainful activity in §§ 674.51(x) and 682.200(b). The proposed definition would specify that substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or both.

Reasons: The proposed regulations reflect the new statutory definition of totally and permanently disabled. Although the HEA provides that a borrower may be considered totally and permanently disabled either in accordance with the Secretary's regulations or under the standards specified in sections 437(a) and 464(c)(1)(F) of the HEA as described above, the Department has decided to use only the new specific statutory substantial gainful activity standard. The Department has decided not to add any additional regulatory standards. Therefore, the proposed revised definition of total and permanent disability reflects only the statutory total and permanent disability standards that were added to the HEA by the HEOA.

The proposed definition of substantial gainful activity is based, in part, on the definition of substantial gainful activity that the Social Security Administration (SSA) uses in connection with determining an individual's eligibility for Social Security disability benefits. However, the Department's proposed definition relies solely on a medical determination and, unlike SSA's definition, does not require a physician to consider whether a borrower can earn more than a specified amount. The Department does not believe that, for purposes of the discharge, it is necessary for a physician to evaluate whether a borrower is able to earn more than a specified amount each year.

Some of the non-Federal negotiators asked for clarification of the reference to work performed ''for profit'' in the proposed definition of substantial gainful activity. They expressed concerns that the term ''profit'' would include income from sources other than employment. The Department explained that the reference to work performed for profit was borrowed from the SSA's definition of substantial gainful activity and is intended to cover self-employed individuals who are not paid by an employer. The Department further noted that the proposed definition of substantial gainful activity refers to ''work'' performed for pay or profit. The term ''work performed for profit'' does not refer to income from sources other than employment (including self employment) and non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

Discharge Process for Borrowers Other Than Certain Veterans (§§ 674.61(b), 682.402(c)(2) Through (c)(7), and 685.213(b))

Statute: Sections 437(a)(1) and 464(k) of the HEA, as amended by the HEOA, provide for the discharge of a borrower's title IV loans if the borrower becomes totally and permanently disabled. Those provisions also authorize the Secretary to promulgate regulations to reinstate a borrower's obligation to repay a loan that was discharged due to disability if, after the discharge, the borrower receives another title IV loan or has earned income in excess of the poverty line, or under other circumstances that the Secretary determines to be necessary.

Current Regulations: Under current regulations, a borrower applies for a total and permanent disability discharge of a title IV loan by submitting a completed loan discharge application that has been certified by a physician to the borrower's loan holder. For Perkins Loans, the loan holder is the Perkins school lender. For FFEL loans, the holder is the lender or, if a default claim has been paid on the loan, the guaranty agency. For Direct Loans and for Perkins or FFEL loans that have been assigned to the Secretary, the loan holder is the Department.

For a Perkins loan held by a school, if the loan holder determines that the information provided on the discharge application supports the conclusion that the borrower is totally and permanently disabled in accordance with the current regulatory definition, the loan holder assigns the loan to the Secretary.

For a FFEL loan that is held by a lender, if the lender determines that the discharge application supports the conclusion that the borrower is totally and permanently disabled, the lender files a disability discharge claim with the guaranty agency. The guaranty agency reviews the borrower's application, and if the guaranty agency concurs with the lender's preliminary determination of discharge eligibility, it pays the lender's discharge claim and assigns the loan to the Secretary.

Once the loan has been assigned, the Secretary reviews the loan discharge application and makes an initial determination of the borrower's eligibility for discharge. For Direct Loans or for Perkins or FFEL loans that were already held by the Secretary, the Secretary's review is the initial review of the borrower's loan discharge application.

If the Secretary concludes that the information on the discharge application does not support the conclusion that the borrower is eligible for a total and permanent disability discharge, the Secretary notifies the borrower that the discharge request has been denied and that the loan is due and payable to the Secretary under the terms and conditions of the promissory note.

If the Secretary determines that the borrower appears to meet the eligibility requirements for a total and permanent disability discharge, the Secretary grants the borrower a conditional discharge for a period of up to three years, beginning on the date the physician certified the borrower's discharge application. During the conditional discharge period, the borrower is not required to make any payments on the loan and no interest accrues on the loan. The Secretary grants a final discharge if, during and at the end of the conditional discharge period, the borrower: (1) Does not receive a new title IV loan or a Teacher Education Assistance for College and Higher Education (TEACH) Grant; (2) does not have earnings from employment that exceed the poverty line amount for a family of two; and (3) ensures that the full amount of any title IV loan disbursement made after the physician's certification date for a loan the borrower received prior to the physician's certification date is returned to the holder within 120 days of the disbursement date. After granting a final discharge of a loan, the Secretary returns to the sender any payments on the loan that were received after the physician's certification date.

If at any time during or at the end of the conditional discharge period the borrower fails to meet one of the requirements for a final discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The borrower is not charged interest for the period during which the loan was conditionally discharged.

Proposed Regulations: The proposed regulations would establish two separate loan discharge processes, one for veterans who have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability, and a different process (the general discharge process) for borrowers who have been determined (as certified by a physician) to be unable to engage in substantial gainful activity due to a physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than 60 months, or that can be expected to last for a continuous period of not less than 60 months. The discharge process for veterans who have been determined to be unemployable due to a service-connected disability is discussed below under the heading "*Discharge Process for Veterans Who Have Been Determined to be Unemployable Due to a Service-Connected Disability.*" This section covers the general discharge process for other borrowers.

The general discharge process included in these proposed regulations is similar in some respects to the discharge process under the current regulations. However, instead of using the current conditional discharge process, the Secretary would discharge a borrower's obligation to repay a loan after determining that the borrower meets the discharge eligibility requirements. The Secretary would then reinstate the borrower's obligation to repay the loan if the borrower fails to meet certain requirements during a post-discharge monitoring period.

Under the proposed regulations, a borrower who wishes to apply for a total and permanent disability loan discharge would submit to his or her loan holders a completed loan discharge application that has been certified by a physician. The loan holder review process would be the same as under the current regulations. If the loan holder and, if applicable, the guaranty agency determine that the information provided on the discharge application supports the conclusion that the borrower is totally and permanently disabled in accordance with the regulatory definition, the loan would be assigned to the Secretary, as under the current regulations. The Secretary would then review the loan discharge application and make a determination of the borrower's eligibility for discharge. As under the current regulations, the Secretary's review would be the initial review of the borrower's discharge application in the case of a Direct Loan or a Perkins or FFEL loan that is already held by the Secretary.

If the Secretary concludes that the information on the discharge application does not support the conclusion that the borrower is eligible for a total and permanent disability loan discharge, the Secretary would notify the borrower that the discharge request has been denied and that the loan is due and payable to the Secretary under the terms and conditions of the promissory note.

Under the proposed regulations, if the Secretary determines that the borrower meets the eligibility requirements for a total and permanent disability discharge, the Secretary would grant a final discharge and return to the sender any payments on the loan that were received after the physician's certification date. At the same time, the Secretary would notify the borrower that the borrower's obligation to repay the loan will be reinstated if, within three years from the discharge date, the borrower: (1) Receives a new title IV loan or TEACH Grant; (2) has earnings from employment that exceed the poverty line amount for a family of two; or (3) fails to ensure that the full amount of any title IV loan or TEACH Grant disbursement made after the discharge date for a loan or TEACH Grant the borrower received prior to the discharge date is returned to the holder or to the Secretary, as applicable, within 120 days of the disbursement date. If a borrower's obligation to repay a loan is reinstated, the borrower is not charged interest for the period from the discharge date to the date of the reinstatement.

The proposed regulations would also provide that, if a borrower received a title IV loan or TEACH Grant before the date the physician certified the loan discharge application and a disbursement of that loan or grant is made after the date of the physician's certification but before the date the Secretary grants the discharge, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

Finally, the proposed regulations would provide that if a borrower's obligation to repay a loan is reinstated after a total and permanent disability discharge, the Secretary will notify the borrower of the reinstatement. The notification will provide the borrower with the reason or reasons for the reinstatement, an explanation that the first loan payment following reinstatement will be due no earlier than 60 days after the date of the notification, and information on how the borrower may contact the Department if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

Reasons: The proposed regulations reflect the statutory provisions that authorize the Secretary to reinstate a borrower's obligation to repay a previously discharged loan under certain conditions. Under the proposed regulations, the general discharge process would, in many respects, be similar to the discharge process under the current regulations. The non-Federal negotiators were generally supportive of this approach. The most significant difference between the proposed and current regulations is that the current conditional discharge process will be replaced by a process in which the Secretary discharges the borrower's obligation to repay the loan after determining that the borrower is totally and permanently disabled, but reinstates the borrower's repayment obligation if the borrower fails to meet certain requirements during a 3-year post-discharge monitoring period. The proposed 3-year post-discharge monitoring period is consistent with the current 3-year conditional discharge period, and the conditions that would result in the reinstatement of a borrower's obligation to repay a previously discharged loan are essentially the same as the conditions that, under the current regulations, result in a conditionally discharged loan being returned to repayment status.

The Department initially proposed a 5-year post-discharge monitoring period and also proposed that upon the reinstatement of a borrower's obligation to repay a previously discharged loan for failure to meet one of the post-discharge requirements, the borrower would be charged interest for the period from the date of discharge to the reinstatement date. The non-Federal negotiators did not support these proposals. Some negotiators questioned the basis for having a 5-year post-discharge monitoring period, since under current regulations the conditional discharge period is only three years. With regard to the Department's initial proposal to charge interest from the discharge date if a borrower's obligation to repay a discharged loan is reinstated, the non-Federal negotiators noted that, under current regulations, a borrower is not charged interest from the conditional discharge date if a conditionally discharged loan is returned to repayment status before the end of the conditional discharge period. After further consideration of the non-Federal negotiators' concerns, the Department revised the proposed regulations by changing the post-discharge monitoring period from five years to three years, and by removing the provision that would have required a borrower to pay interest from the date of discharge if the borrower's repayment obligation is reinstated.

The Department also initially proposed that one of the conditions for reinstatement of a borrower's obligation to repay a previously discharged loan would be if the borrower had annual earnings from employment during the post-discharge monitoring period that exceeded the poverty guideline amount for the borrower's family size. Current regulations provide that a conditionally discharged loan is returned to repayment status if the borrower has employment earnings during the conditional discharge period that exceed the poverty guideline amount for a family of two, regardless of the borrower's actual family size. The Department believed that the proposed change to a standard based on the borrower's actual family size would be more equitable, as it would allow a borrower with a family size greater than two to have a higher level of employment earnings during the post-discharge monitoring period without being subject to reinstatement of the borrower's repayment obligation on the discharged loan. However, some non-Federal negotiators expressed concerns that the proposed change to an employment earnings standard based on actual family size would be confusing to borrowers, since a borrower's family size could change during the post-discharge monitoring period. These non-Federal negotiators believed that it would be preferable to maintain the current standard based on a family size of two, so that a borrower would not need to monitor changes in the employment earnings limit if the borrower's family size increased or decreased during the post-discharge monitoring period. The Department agreed.

The Department's initial proposed regulations did not include a provision comparable to the provision in current regulations that addresses the treatment of a title IV loan disbursement made during the conditional discharge period for a loan the borrower received prior to the physician's certification date. Under the current regulations, a borrower is ineligible for a final discharge unless the borrower ensures that such a disbursement is returned to the loan holder within 120 days of the disbursement date. The Department initially did not include a similar provision in the proposed regulations because the current regulatory provision is tied to the conditional discharge period, which would be eliminated under the proposed regulations. Under the proposed regulations, the post-discharge monitoring period begins on a later date than the current conditional discharge period, and a disbursement of a title IV loan received prior to the physician's certification date is less likely to occur. However, some non-Federal negotiators noted that this situation could still arise under the proposed regulations and recommended that the proposed regulations be revised to include a provision comparable to the provision in the current regulations. The Department agreed. The proposed regulations would provide that a borrower's obligation to repay a discharged loan will not be reinstated if the borrower ensures that a title IV loan or TEACH Grant disbursement made during the post-discharge monitoring period for a loan or TEACH Grant received prior to the discharge date is returned to the loan holder within 120 days of the disbursement date. The proposed regulations would include TEACH Grant disbursements in this provision because a condition for receiving a TEACH Grant is that the student must agree to complete a teaching service obligation. A student who accepts a TEACH Grant presumably would not be totally and permanently disabled, as this condition would preclude the student from completing the TEACH Grant service obligation.

The Committee also discussed the possible effect on a borrower's discharge request of a disbursement being made during the period between the physician's certification date and the discharge date for a loan or TEACH Grant received prior to the physician's certification date. This issue does not arise under the current regulations because of the structure of the conditional discharge period. Based on these discussions, the Department revised the proposed regulations to provide that if a disbursement of a title IV loan or TEACH Grant is made during the period between the physician's certification date and the discharge date, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the disbursement is returned to the loan holder or the Secretary, as applicable.

Finally, some of the non-Federal negotiators expressed concern that the Department's initial proposal did not explicitly provide that the Secretary would notify a borrower who fails to meet one of the eligibility requirements during the post-discharge monitoring period that the borrower's obligation to repay the discharged loan has been reinstated. The Department's regulations generally do not specifically address the actions of the Department, but the non-Federal negotiators strongly urged the Department to include such a provision in the proposed regulations. These negotiators also requested that the proposed regulations specify that the Secretary's notification of reinstatement will tell borrowers the reason for the reinstatement and provide the borrower with information on how to contact an appropriate office or official if they have questions or believe that the reinstatement was based on incorrect information. The Department agreed to add to the proposed regulations a provision stating that the Secretary will notify a borrower that his or her obligation to repay a previously discharged loan has been reinstated. The proposed regulations also provide that the notification of reinstatement will include the reason or reasons for the reinstatement, an explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement, and information on how the borrower may contact the Department if he or she has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

The Department also agreed to take steps to further improve its notices to borrowers who have applied for or received disability discharges under the proposed regulations to more clearly explain the discharge process and the borrower's rights and responsibilities with respect to that process. In particular, the Department intends to take steps to develop a process to acknowledge receipt of a borrower's submission of a request that the Department reconsider its determination and to provide borrowers with information on the Secretary's process for considering such requests and how the borrower will be made aware of the Secretary's decision.

Discharge Process for Veterans Who Have Been Determined To Be Unemployable Due to a Service-Connected Disability (§§ 674.61(c), 682.402(c)(8), and 685.213(c))

Statute: The HEOA added sections 437(a)(2) and 464(c)(1)(F)(iv) to the HEA to provide that a borrower who has been determined by the Secretary of Veterans Affairs (VA) to be unemployable due to a service-connected disability and who provides documentation of that determination to the Secretary is to be considered totally and permanently disabled for the purpose of discharging the borrower's title IV loans. Section 437(a)(2) of the HEA further specifies that a borrower who provides such documentation may not be required to present additional documentation for the purpose of determining eligibility for a total and permanent disability loan discharge.

Proposed Regulations: The proposed regulations would establish a separate discharge application process for borrowers who provide documentation showing that they have been determined by the VA to be unemployable due to a service-connected disability. Under the proposed regulations, the borrower would submit to the loan holder a loan discharge application accompanied by documentation from the VA showing that the borrower has been determined to be unemployable due to a service-connected disability. The borrower would not be required to have a physician certify the loan discharge application, and would not be required to provide any additional documentation related to the borrower's service-connected disability.

If the documentation from the VA does not indicate that the borrower has been determined to be unemployable due to a service-connected disability, the loan holder would deny the borrower's discharge request. However, if the documentation indicates that the borrower may be totally and permanently disabled under the general definition of a total and permanent disability, the loan holder would inform the borrower that he or she may reapply for a loan discharge under the general procedures for a disability discharge.

If the documentation indicates that the VA has determined that a Perkins Loan borrower is unemployable due to a service-connected disability, the Perkins school loan holder would submit a copy of the borrower's discharge application and supporting documentation to the Secretary, and would notify the borrower that the discharge request has been referred to the Secretary for a determination of eligibility. In the case of a FFEL loan that is held by a lender, the lender would refer the borrower's application to the guaranty agency and file a disability discharge claim with the agency. If the guaranty agency agrees that the VA documentation shows the borrower has been determined to be unemployable due to a service-connected disability, the guaranty agency would refer the borrower's application to the Secretary. In contrast to the general discharge procedures, the borrower's loan would not be assigned to the Secretary.

Under the proposed regulations, if the Secretary determines that the borrower meets the total and permanent disability standard based on a determination by the VA that the borrower is unemployable due to a service-connected disability, the Secretary would notify the Perkins Loan school or guaranty agency that the borrower is eligible for a total and permanent disability loan discharge. The Perkins Loan school would then discharge the borrower's loan and return to the sender any payments on the loan that were received on or after the effective date of the VA's determination that the borrower is unemployable due to a service-connected disability. The guaranty agency would pay the lender's disability discharge claim and notify the borrower that the borrower's obligation to make any further payments on the loan has been discharged. Upon receipt of the claim payment from the guaranty agency, the lender would return any payments on the loan received on or after the effective date of the VA's determination to the person who made the payments. There would be no post-discharge monitoring period for a borrower who receives a total and permanent disability discharge through this process, and the borrower would not be subject to reinstatement of his or her obligation to repay the discharged loan based on post-discharge employment earnings or receipt of a new title IV loan or TEACH Grant. The same discharge process would apply to borrowers with Direct Loans or Perkins or FFEL loans that are held by the Department.

If the Secretary determines, based on a review of the documentation from the VA, that the borrower does not meet the standard for a disability discharge, the Secretary would notify the Perkins Loan school or guaranty agency of that decision, and collection on the loan would resume.

Reasons: The proposed regulations are necessary to implement the statutory total and permanent disability discharge standard for certain veterans.

Borrower Eligibility for New Title IV Loans After a Prior Total and Permanent Disability Discharge (§§ 674.9(g), 682.201(a), and 685.200(a))

Statute: The HEA does not specify eligibility requirements for borrowers who apply for a new title IV loan after a prior loan has been discharged due to a total and permanent disability.

Current Regulations: Under the current regulations in the Perkins, FFEL, and Direct Loan programs, a borrower whose prior title IV loan was discharged due to a total and permanent disability must meet certain requirements before receiving a new loan. Specifically, the borrower must: (1) Provide a certification from a physician that the borrower is able to engage in substantial gainful activity; and (2) sign a statement acknowledging that any new loan the borrower receives cannot be discharged in the future based on any present condition, unless that condition substantially deteriorates. In addition, if a borrower's prior loan is in a conditional discharge status, the conditionally discharged loan must be returned to repayment status before the borrower may receive a new loan.

Proposed Regulations: The proposed regulations would retain the current requirement that, to receive a new title IV loan after a disability discharge, a borrower would have to obtain a certification from a physician that the borrower is able to engage in substantial gainful activity, and acknowledge that the new loan may not be discharged in the future based on any present condition unless the condition substantially deteriorates. The proposed regulations would also provide that if a borrower receives a new title IV loan within three years of the date that a prior title IV loan or TEACH Grant service obligation was discharged on the basis of the borrower's disability, the borrower would be required to resume repayment on the previously discharged loan or acknowledge that he or she is again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

The current total and permanent disability discharge regulations will continue to apply to any borrower whose loan discharge application is received prior to the effective date of any final regulations published as a result of this NPRM. Therefore, the proposed regulations would retain the current provision that requires a loan in a conditional discharge status to be returned to repayment status before a borrower who received a conditional discharge may receive a new loan.

Reasons: The changes to the borrower eligibility regulations are conforming changes that are needed to effectively implement the new total and permanent disability loan discharge process.

Consolidation Loans (§§ 682.201(e), 682.206(f) and 685.220(d))

Statute: The HEOA amended sections 428C(a)(3)(B)(i)(V) and 428C(b)(5) of the HEA to provide that FFEL loan borrowers may consolidate their loans into a Direct Consolidation Loan for the purpose of using the no interest accrual benefit for active duty service members, which is only available in the Direct Loan Program. This benefit provides that interest will not accrue on the Direct Loan of an eligible military borrower for a period of not more than 60 months while the borrower is serving on active duty during a war or other military operation or national emergency, or performing qualifying National Guard duty during a war or other military operation or national emergency, and is serving in an area of hostilities in which service qualifies for special pay under section 310 of title 37 of the United States Code.

The HEOA also amended section 433 of the HEA by adding a separate set of disclosures for Consolidation loan borrowers. At the time a lender provides a Consolidation loan application to a prospective borrower, it must provide specific information about Consolidation loans. In particular, a lender must inform the borrower that by applying for a Consolidation loan, the borrower is not obligated to take the loan.

Current regulations: Section 682.201 of the regulations establishes the eligibility requirements for borrowers seeking a FFEL Consolidation loan. Section 685.220 of the current regulations establishes the eligibility requirements for a borrower seeking a Direct Consolidation Loan. Current regulations permit borrowers who have only FFEL loans to consolidate those loans into a Direct Consolidation Loan to obtain an income contingent repayment plan or to qualify for the Public Service Loan Forgiveness Program. In addition, FFEL borrowers whose loans have been submitted to the guaranty agency for default aversion assistance may apply for a Direct Consolidation Loan.

Section 682.206(f) of the current regulations includes requirements for lenders in the making of FFEL Consolidation loans. Those requirements include the requirement that the lender obtain lender verification certifications from the holders of the loans to be repaid by the Consolidation loan.

Proposed regulations: The proposed regulations would amend §§ 682.201(e) and 685.220(d) to include an additional condition under which a borrower with only FFEL loans may consolidate those loans into a Direct Consolidation Loan. The proposed regulations would provide that a borrower with only FFEL loans may consolidate into the Direct Loan Program to use the no accrual of interest benefit for active duty military service personnel.

The proposed regulations would also incorporate into the regulations a statutory change made by the College Cost Reduction and Access Act of 2007 (CCRAA) that is not currently reflected in the Department's regulations. Specifically, the proposed regulations would provide that a borrower may consolidate a FFEL Consolidation loan into the Direct Loan Program without including another eligible loan in the consolidation if the FFEL Consolidation loan is in default, or if the borrower wishes to obtain an income-based repayment plan.

The proposed regulations would also modify section 682.206(f) to incorporate a new requirement that is needed to fully implement § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to agree to take the loan. Section 682.206(f) would be amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The proposed regulations would require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

Reasons: The proposed changes to §§ 682.201(e) and 685.220(d) are being made to implement statutory requirements. The proposed change to § 682.206(f) is being made to ensure that borrowers are given an appropriate opportunity to cancel a Consolidation loan for which they may have applied.

The HEOA instituted several new disclosure requirements for lenders and established very specific disclosures requirements for lenders making a Consolidation loan. In particular, the HEOA requires a lender to inform a Consolidation loan applicant that applying for the loan does not obligate the borrower to agree to take the loan. The Department determined that it was important to ensure that borrowers are given both a clear explanation of the process for canceling a Consolidation loan and the time frame within which they may exercise their right to cancel the loan. Therefore, the Department is proposing language in § 682.206(f) providing borrowers with a 10-day period, before a Consolidation loan is made, during which the borrower could reconsider the Consolidation loan and cancel the loan if appropriate.

There were a number of issues raised by the negotiators regarding this provision. Some non-Federal negotiators expressed concern about the Department's original proposal to provide a five-day period for a borrower to cancel the loan with the lender. These non-Federal negotiators did not think the initial proposal provided enough clarity as to the date on which the five-day period would begin. One non-Federal negotiator indicated that the consolidation process is highly automated and if the servicer of the loans to be consolidated is also the servicer or lender for the Consolidation loan, the loan process could be completed in as little as 24–48 hours. The Department was asked to provide an opportunity for a borrower to waive his or her right to cancel the loan to allow the process to occur more quickly if the borrower chose to do so.

During the negotiations, the Department described how the Direct Loan Program currently provides borrowers an opportunity to affirm their decision to take a Consolidation loan.

Based on the practice in the Direct Loan Program, the Department proposed revised language establishing a timeframe for a borrower to cancel a Consolidation loan that would be similar to the timeframe in the Direct Loan Program, and that would be clear and understandable to all participants. The language in proposed § 682.206(f)(ii) reflects the revised proposal.

The Department strongly believes that the HEA clearly intends that a standard process should be established to provide a Consolidation loan applicant with the opportunity to cancel the application for the loan. The Department believes the proposed regulatory language reflects an appropriate balance between allowing the borrower sufficient time to make an informed determination about moving forward with the process for a Consolidation loan while not unnecessarily delaying its completion. The Department does not agree with the recommendation that the regulations provide an opportunity for a borrower to waive the right to cancel a Consolidation loan if the borrower wants the consolidation process to occur more quickly. The Department believes that the 10-day cancellation period provides appropriate protection to the borrower. Accordingly, under the proposed regulations, the 10-day cancellation period may not be waived by the borrower.

One non-Federal negotiator asked if the proposed cancellation notification requirement would apply to a request by a borrower to add loans to an existing Consolidation loan during a 180-day period as permitted by the HEA. The negotiator was concerned that if the requirement applied to requests to add loans to an existing Consolidation loan, it could have a negative consequence to a borrower if a loan was inadvertently left out of the consolidation process and simply needed to be added. The Department agreed that once the loan is made, the 10-day waiting period does not apply if the borrower adds additional loans during the permitted 180-day period.

In-School Deferments, Interest Capitalization, and Administrative Forbearance for PLUS Loans (§§ 682.202(b), 682.210(v), 682.211(f), 685.202(b), 685.204(g), and 685.205(b))

Statute: Section 428B(d) of the HEA, as amended by the HEOA, adds new in-school deferment provisions for PLUS loans first disbursed on or after July 1, 2008. Specifically, the HEA provides that a parent PLUS borrower may defer repayment of a PLUS loan first disbursed on or after July 1, 2008 during the period while the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis. A graduate or professional student PLUS borrower may defer repayment of a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled at an eligible institution on at least a half-time basis.

The HEA does not address the capitalization of interest on a PLUS loan that accrues during the period from the date of the first disbursement until the date the repayment period begins.

Current Regulations: Current regulations do not address the capitalization of interest on a PLUS loan that accrues from the date of the first disbursement until the date the repayment period begins.

Proposed Regulations: The proposed regulations would revise §§ 682.210 and 685.204 to provide that, upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the proposed regulations would provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from the National Student Loan Data System (NSLDS) confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The proposed regulations would revise the interest capitalization provisions in § 682.202(b) to provide that a lender may capitalize interest on a PLUS loan that has accrued from the date of the first disbursement until the date the repayment period begins, and would make a corresponding change in the Direct Loan Program regulations by revising § 685.202(b) to provide that the Secretary may capitalize unpaid interest on a PLUS loan when the loan enters repayment.

Finally, the proposed regulations would add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford Loans that are subject to a grace period. The lender would be required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision would be added to § 685.205(b) in the Direct Loan Program regulations.

Reasons: The proposed PLUS loan deferment regulations implement statutory provisions that were added to the HEA by the HEOA.

The Department is proposing to amend the current interest capitalization provisions for PLUS loans to reflect current practice with regard to capitalization of unpaid loan interest that accrues from the date of the first disbursement until the date the loan enters repayment.

The proposed new administrative forbearance provision reflects a recommendation from one of the non-Federal negotiators. This negotiator was concerned that PLUS loan borrowers, particularly student PLUS loan borrowers, who have both PLUS loans first disbursed before July 1, 2008 and PLUS loans first disbursed on or after July 1, 2008 may believe that all of their PLUS loans are eligible for the new 6-month post-enrollment deferment period. However, this deferment is only available on PLUS loans first disbursed on or after July 1, 2008. Because the 6-month post-enrollment deferment for student PLUS loans first disbursed on or after July 1, 2008 may be granted automatically as an extension of the borrower's in-school deferment period, a student PLUS borrower who also has pre-July 1, 2008 PLUS loans may not understand that the loans first disbursed before July 1, 2008 do not qualify for the post-enrollment deferment, and the in-school deferment period on such loans will end when the student ceases to be enrolled on at least a half-time basis. The non-Federal negotiator asked the Department to consider amending the regulations to provide for the alignment of repayment of a borrower's PLUS loans first disbursed before July 1, 2008 with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period, so that the borrower would begin making payments on all of the loans at the same time. The Department agreed.

Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans (§§ 682.202, 682.302, and 685.202)

Statute: The HEOA amended section 428(d) of the HEA to provide that FFEL and Direct Loan program loans are subject to the provision in section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 527) (SCRA) that limits the interest rate on a borrower's loan to six percent during periods of active duty military service. The limitation applies to loans incurred by the servicemember, or by the servicemember and the servicemember's spouse jointly, before the servicemember entered military service. Section 438 of the HEA was also amended to specify that, for any FFEL program loan first disbursed on or after July 1, 2008 that is subject to the six percent interest rate limit of the SCRA, the interest rate used to calculate the lender's special allowance payment is the rate that is determined in accordance with the SCRA.

Proposed Regulations: The proposed regulations would revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The proposed regulations would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, a FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

Reasons: The proposed regulations are necessary to reflect statutory requirements.

During the negotiations, the Department clarified that for determining compliance with this provision, interest under the SCRA includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability. The Department also noted that a lender is prohibited from assessing a borrower who is subject to the SCRA interest rate cap an additional charge after the borrower's period of active duty military service that is equal to the difference between the otherwise applicable interest rate on the FFEL loan and the six percent cap.

In response to questions from the negotiators, the Department also clarified that the SCRA interest rate cap applies to the loan, not to the borrower. As long as the debt was incurred before the borrower's military service began, the interest rate cap applies to any joint consolidation loan or other co-borrowed loan, and applies to a PLUS loan made to a borrower with an endorser even if only one of the individuals is performing active duty military service. For purposes of this restriction, a loan is considered incurred by an endorser when the Endorser Addendum to the PLUS Loan Master Promissory Note is signed, and the requirement that the debt be incurred before military service is based on that date. The debt-before-service date on a consolidation loan is the date the consolidation loan was made as a new debt, not the disbursement date of the loans repaid by the consolidation loan.

In-School Deferment (§§ 682.210(a), 682.210(c)(1), and 685.204(b)(1))

Statute: Section 428(b)(1)(Y) of the HEA was amended by the HEOA to include an additional method for granting an in-school deferment on a FFEL or Direct Loan. A loan holder may grant an in-school deferment based on the lender's confirmation of the borrower's half-time enrollment status through the use of NSLDS, if the confirmation is requested by the institution of higher education. A new provision was also added to the HEA to require a lender, at the time the lender grants a deferment to a borrower with an unsubsidized Stafford Loan, to provide the borrower with information to assist the borrower in understanding the impact of capitalization of interest on the borrower's loan principal and on the total amount of interest to be paid during the life of the loan.

Current Regulations: Section 682.210(c)(1) of the current FFEL regulations specifies that a lender must grant an in-school deferment when a borrower requests and submits supporting documentation for the deferment or when the lender receives information from the school on a borrower's eligibility for an in-school deferment in connection with the borrower's receipt of a new loan, or when the lender receives student status information, directly or indirectly, from the borrower's school indicating the borrower's eligibility for the deferment. Section 685.204(b)(1) of the Direct Loan program regulations contains comparable provisions.

Section 682.210(c)(2) of the FFEL regulations requires the lender, when granting an in-school deferment on a FFEL program loan based on information provided by the school, to notify the borrower that the deferment has been granted and that the borrower has the option to pay the accruing interest on an unsubsidized loan or to cancel the deferment and continue paying on the loan. The lender is also required to include in the notice an explanation of the consequences of those options. Under § 685.204(b)(1)(iii)(B) of the Direct Loan regulations, the Secretary notifies the borrower after granting an in-school deferment based on information provided by the school that the borrower has the option to continue paying on the loan, and that if the borrower elects to cancel the deferment, the borrower may pay the principal and interest payments that were deferred. If the borrower fails to do so, the Secretary applies a deferment and capitalizes the interest that accrued during the period in which payments were not made.

Proposed Regulations: The proposed regulations would revise §§ 682.210(c)(1) and 685.204(b)(1)(iii)(A) to reflect the additional statutory method a lender or the Secretary may use to grant an in-school deferment, based on confirmation of the borrower's half-time enrollment status through the use of NSLDS if requested by the borrower's school. The proposed regulations would also revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender would also be required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments would be removed from § 682.210(c)(2) of the FFEL regulations. A comparable change would be made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

Reasons: The proposed changes are necessary to reflect the statutory changes made by the HEOA that affect the process for granting in-school deferments in the FFEL and Direct Loan programs and that require that additional information be provided so that borrowers better understand the impact of the capitalization of interest on the total cost of the loan. At the request of the negotiators, the Department clarified that the use of NSLDS, at the request of a borrower's school, to confirm a borrower's enrollment status is an additional method for granting in-school deferments and does not replace other pre-existing methods. In-school deferments may continue to be granted by a lender consistent with the requirements of § 682.210(s)(1)(iii) and based on student status information provided directly or indirectly by a school, including status information reported to NSLDS, without a specific request from the school.

The Department also clarified that the information provided to borrowers on the impact of capitalization of accruing unpaid interest during deferment periods, including the example, may be general in nature rather than borrower-specific. The Department also agreed with a proposal from some non-Federal negotiators that it would be helpful to borrowers to provide the required information on capitalization when the borrower applies for the deferment, by including it in standardized deferment forms, rather than only providing the information when the borrower is granted the deferment.

Income-Based Repayment (IBR) Plan (§§ 682.215 and 685.221)

Definition of Partial Financial Hardship (§§ 682.215(a)(4) and 685.221(a)(4))

Statute: Section 493C(a)(3) of the HEA provides that a borrower has a partial financial hardship, for the purpose of establishing eligibility for the income-based repayment (IBR) plan, if the amount due on all of the borrower's eligible FFEL and Direct Loans (as calculated under a standard repayment plan based on a 10-year repayment period) exceeds 15 percent of the difference between the borrower's (and, if applicable, the borrower's spouse's) adjusted gross income (AGI) and 150 percent of the poverty guideline for the borrower's family size. If a married borrower files a separate Federal income tax return, section 493C(d) of the HEA provides that only the borrower's income and eligible student loan debt are used in determining the amount of the borrower's payment under the IBR plan. An eligible loan under section 493C(a)(3) is any loan made, insured, or guaranteed under the FFEL and Direct Loan programs other than parent PLUS loans made under the FFEL and Direct Loan programs and consolidation loans under both programs that repaid parent PLUS loans.

Current Regulations: The current regulations reflect the statutory definition of the term partial financial hardship and define the terms ''AGI,'' ''family size,'' and ''poverty guideline'' consistent with the use of those terms in § 682.210 for purposes of determining a borrower's eligibility for an economic hardship deferment. AGI means the income reported by the borrower to the Internal Revenue Service (IRS). For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. If a married borrower files a separate Federal tax return, AGI includes only the borrower's income. A borrower's family size includes the borrower, the borrower's spouse and the borrower's children (including unborn children who will be born during the year the borrower certifies family size), if the children receive more than half their support from the borrower for the year the borrower certifies family size. Other individuals are included in family size if, at the time the borrower certifies family size, those other individuals live with the borrower and receive more than half their support for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs. The poverty guideline is the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If the borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States. The term eligible loan reflects the statutory definition.

Proposed Regulations: The proposed regulations would specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans as calculated under a standard repayment plan with a 10-year repayment period when the borrower initially entered repayment on those loans, or the annual amount due on those loans as calculated under a standard repayment plan with a 10-year repayment period when the borrower elects the IBR plan. The proposed regulations would also provide that when a married borrower and his or her spouse file a joint tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

Reasons: In the regulations governing the IBR Plan, the Department provided that, when determining a borrower's partial financial hardship for purposes of IBR, the loan holder should compare the annual amount the borrower would pay on the borrower's eligible loans at the time the borrower initially entered repayment on the total outstanding balance of those loans, based on a standard repayment over a 10-year repayment period, to the annual amount a borrower would pay under the provisions of the IBR plan. During the negotiations, a non-Federal negotiator pointed out that always using the annual amount the borrower would pay based on the outstanding balance of the loans when the borrower initially entered repayment disadvantages those borrowers whose outstanding balance has increased from the date the borrower initially entered repayment until the date the borrower requests IBR. This is particularly true for borrowers who have experienced significant difficulty repaying the loans, particularly unsubsidized loans, and who have used deferments and forbearances to avoid delinquency, with the result that their outstanding loan principal balance has increased due to capitalized interest. The Department and the other negotiators agreed that a borrower whose outstanding balance has increased rather than decreased during the repayment period prior to the borrower's request for IBR should be given the benefit of having partial financial hardship determined based on the annual amount due, as calculated under a standard repayment plan with a 10-year repayment period, on the borrower's increased outstanding loan principal balance.

The Department also proposed a change related to how eligibility for partial financial hardship is determined for married borrowers who file a joint Federal tax return and who both have eligible loans. The proposed change would ensure that if both borrowers qualify for IBR, their combined payment amounts will not exceed the 15 percent threshold under the IBR plan. The Department initially proposed the use of each individual borrower's portion of the joint AGI and eligible loan amount to determine eligibility for IBR. After additional discussion, however, the Department and the negotiators agreed that this approach would impose a significant burden on borrowers, who would be required to submit additional documentation to identify their individual portion of any joint income, and would also require the loan holder to determine each borrower's eligibility using a manual (instead of an automated) process. The Department and the negotiators agreed to adopt a suggestion by one of the non-Federal negotiators to use the joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans to determine eligibility for IBR and the partial financial hardship payment amount. That payment amount would then be adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower, with a further adjustment if the borrower has multiple loan holders.

Income-Based Payment Amount (§§ 682.215(b)(1) and 685.221(b)(2))

Statute: Under section 493C(b)(1) of the HEA, the monthly payment amount for a borrower who has a partial financial hardship is determined by calculating 15 percent of the amount obtained by subtracting 150 percent of the poverty guideline amount for the borrower's family size from the borrower's AGI, and then dividing this amount by 12.

Current Regulations: Sections 682.215(b) and 685.221(b) provide that if a borrower's eligible loans are held by more than one holder, the loan holder must adjust the amount of a borrower's calculated monthly payment. The borrower's adjusted monthly payment is determined by multiplying the calculated monthly payment amount by the percentage of the total outstanding principal amount of eligible loans that are held by that holder.

Proposed Regulations: Under the proposed regulations, if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders. In this case, the adjusted payment amount would be multiplied by the percentage of the borrower's total outstanding principal amount of eligible loans that are held by the loan holder.

Reasons: Without the proposed payment adjustment based on the borrower's percentage of the combined eligible loan debt of the borrower and his or her spouse that is used to calculate the partial financial hardship of both borrowers, the borrower's monthly payment amount could exceed the statutory maximum amount the borrower can be required to pay.

FFEL and Direct Loan Program Teacher Loan Forgiveness (§§ 682.216 and 685.217)

Statute: The HEOA amended the FFEL and Direct Loan teacher loan forgiveness provisions in sections 428J and 460 of the HEA to specify that an otherwise eligible borrower may qualify for teacher loan forgiveness based on teaching service performed at a location operated by an educational service agency if the educational service agency meets the eligibility criteria that apply to elementary or secondary schools for teacher loan forgiveness purposes. In the case of a teacher who is employed by an educational service agency, the HEA provides that the chief administrative officer of the educational service agency must certify the borrower's qualifying teaching service.

The HEOA also amended the teacher loan forgiveness provisions to prohibit a borrower from receiving double benefits for the same teaching service. The HEA now prohibits a borrower from receiving loan forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same qualifying teaching service. In addition, a borrower may not receive loan forgiveness benefits for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and the Direct Loan public service loan forgiveness program (§ 685.219), subtitle D of title I of the National and Community Service Act of 1990 (the AmeriCorps program), or the Loan Forgiveness for Service in Areas of National Need program authorized by section 428K of the HEA.

Current Regulations: Under current regulations, an otherwise eligible FFEL or Direct Loan borrower may qualify for teacher loan forgiveness only by performing qualifying teaching service in an eligible elementary or secondary school that serves low-income families. Borrowers who teach at a location operated by an educational service agency are not eligible for loan forgiveness.

Current regulations prohibit a borrower from receiving loan forgiveness for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and under subtitle D of title I of the National and Community Service Act of 1990. A borrower who has both FFEL and Direct Loan program loans may not receive more than the maximum loan forgiveness amount on the borrower's combined outstanding FFEL and Direct Loan balance, but is not otherwise prohibited from receiving forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same qualifying teaching service.

Proposed Regulations: The proposed regulations would allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more locations of an eligible educational service agency that serves low-income families. A borrower could also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible service for teacher loan forgiveness purposes, an educational service agency would have to meet the same eligibility requirements that apply to elementary and secondary schools under current regulations. For a borrower employed at an eligible educational service agency, the borrower's qualifying teaching service would have to be certified by the chief administrative officer of the educational service agency.

Under the proposed regulations, qualifying teaching service performed at an eligible educational service agency could be counted toward the required five consecutive complete years of full-time teaching only if the consecutive five-year period includes qualifying teaching service performed at an eligible educational service agency after the 2007–2008 academic year.

The proposed regulations would define the term ''educational service agency'' as a regional multiservice agency authorized by State law to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Finally, the proposed regulations would prohibit a borrower from receiving loan forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same teaching service, or from receiving loan forgiveness for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and: (1) The Direct Loan public service loan forgiveness program in § 685.219; (2) subtitle D of title I of the National and Community Service Act of 1990; or (3) the Loan Forgiveness for Service in Areas of National Need program authorized by section 428K of the HEA.

Reasons: The proposed changes reflect statutory requirements.

One of the non-Federal negotiators noted that some teachers do not have a fixed location of employment but instead perform qualifying teaching service at multiple eligible elementary or secondary schools, or at multiple eligible educational service agencies. This negotiator requested clarification that such ''traveling'' teachers, if otherwise eligible, would qualify for loan forgiveness if they are not actually employed by the individual schools or educational service agencies where they teach. The Department agreed that such teachers, if otherwise eligible, would qualify for teacher loan forgiveness. The current and proposed regulations provide that a borrower's qualifying teaching service must be performed ''in'' or ''at'' an eligible elementary or secondary school or eligible educational service agency and do not rely on the identity of the employer.

The Department's initial proposed regulations allowed qualifying teaching service performed at an eligible educational service agency to be counted toward a borrower's required five complete consecutive years of teaching service only if the service was performed after August 14, 2008, the date of enactment of the HEOA. One of the non-Federal negotiators argued that the amendments to the teacher loan forgiveness provisions of the HEA were intended to apply retroactively to October 1, 1998, the date of enactment of the FFEL and Direct Loan teacher loan forgiveness provisions. However, the Department does not agree with this interpretation of the law. The Department noted that Congress has specifically made other changes to the HEA retroactive, but chose not to do so in this case. However, the Department agreed to revise the proposed regulations to provide that the required five complete consecutive years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Eligibility for Rehabilitation of Defaulted FFEL and Direct Loans (§§ 682.405(a) and (b)(1)(iii) and 685.211(f))

Statute: Section 428F(a) of the HEA was amended by the HEOA to prohibit a borrower from rehabilitating a defaulted loan more than once.

Current Regulations: The regulations in §§ 682.405 and 685.211 provide for the rehabilitation of defaulted FFEL and Direct Loan program loans after a borrower makes nine voluntary, reasonable and affordable payments to the guaranty agency holding the defaulted loan, or to the Secretary in the case of a defaulted Direct Loan. After the borrower meets the payment requirements to reestablish a successful repayment pattern, a defaulted FFEL loan is rehabilitated upon resale of the loan to an eligible FFEL lender, at which time the borrower returns to normal repayment servicing. In the Direct Loan Program, after the borrower meets the payment requirements, the loan is transferred from a default collection status to a normal repayment servicing status. Current regulations do not include a limit on the number of times a borrower may rehabilitate a defaulted loan.

Proposed Regulations: The proposed regulations would amend §§ 682.405(a)(3) and 685.211(f)(3) to provide that for any loan that is rehabilitated on or after August 14, 2008, the borrower may not rehabilitate the loan again if the loan returns to a default status following the rehabilitation.

The proposed regulations would also amend § 682.405(b)(1)(iii) to clarify that the guaranty agency and its agents must comply with the requirements of that section when determining a borrower's ''reasonable and affordable'' payment amount for loan rehabilitation purposes.

Reasons: The proposed regulations are necessary to reflect the change in section 428F(a) of the HEA that prohibits a borrower from rehabilitating a defaulted loan more than once, and to clarify that guaranty agencies and their agents must comply with current regulatory requirements for determining reasonable and affordable payments.

The Department's original proposed regulations specified only that a borrower is prohibited from rehabilitating a defaulted loan more than once. Several non-Federal negotiators expressed the view that the Department's interpretation of the statutory effective date of August 14, 2008 for this provision should be included in the regulations or discussed in the preamble to the proposed regulations. The non-Federal negotiators also requested that the Department identify in the regulations the triggering event that results in a borrower's inability to rehabilitate the loan again. The Department agreed and revised the proposed regulations to specify that the one-time limit on rehabilitation applies only to a defaulted loan that was rehabilitated on or after August 14, 2008. A borrower who rehabilitated a defaulted loan before that date, and later defaults again on the loan, could rehabilitate that loan again. However, if the borrower rehabilitates the loan a second time, the loan would become subject to the limit. The Department also revised the proposed regulations to specify that the triggering event for the application of the one-time rehabilitation limit on a loan is the borrower's return to a default status on that previously rehabilitated loan.

Another non-Federal negotiator expressed concern about the process for determining payment amounts for rehabilitation. The negotiator stated that there was no consistent, standardized approach to determining ''reasonable and affordable'' borrower payments for purposes of loan rehabilitation across the guaranty agencies and their agents. The negotiator stated that some agencies and agents demanded a specified percentage or payment amount without apparent regard to the borrower's financial circumstances, in violation of the HEA, and expressed the view that this perhaps represented a program compliance issue. The Department stated its belief that the requirements for determining reasonable and affordable borrower payments were already sufficiently detailed and explicit in § 682.405(b)(1)(iii). However, the Department agreed to revise the lead-in language to this regulation to make it clear that a guaranty agency and all of its agents are subject to the requirements of § 682.405(b)(1)(iii) when determining a borrower's reasonable and affordable payment amount for purposes of loan rehabilitation. This clarifying change is intended to ensure compliance with this requirement by a guaranty agency and all of the agency's agents, particularly collection agents that may be working with defaulted borrowers.

Guaranty Agency and Lender Prohibited Inducements (§§ 682.200(b) and 682.401(e))

Statute: Section 435(d)(5) of the HEA provides that, after notice and an opportunity for a hearing, the Secretary may disqualify a FFEL lender from participation in the FFEL Program if it is determined that the lender engaged in certain prohibited activities to secure applicants for FFEL loans. These prohibited activities include offering, directly or indirectly, points, premiums, payments, prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, providing information technology at below-market value, and providing additional financial aid funds to any institution of higher education or its employees. Lenders are prohibited from entering into any type of consulting arrangement or other type of contract to provide services to a lender with an employee who is employed in an institution's financial aid office or who otherwise has responsibility over student loans or other student aid. The HEA also prohibits lenders from performing any function for an institution of higher education that is a required function for that institution under title IV of the HEA, other than exit counseling.

Similarly, section 428(b)(3) of the HEA restricts guaranty agencies from offering inducements or engaging in certain prohibited activities to secure applicants for FFEL loans or to secure the designation as the insurer of loans. Guaranty agencies are prohibited from offering, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payments or reimbursements to any institution of higher education or to any employee of the institution to secure FFEL loan applications; or to lenders or their agents or employees, or to an independent contractor of any lender or guaranty agency to administer or market FFEL loans for the purpose of securing the designation of insurer of the loans. In addition, a guaranty agency may not conduct fraudulent or misleading advertising concerning loan availability, terms or conditions and, like lenders, guaranty agencies may not perform for an institution of higher education any function the institution is required to perform under title IV, other than exit counseling. The statute allows both lenders and guarantors to provide technical assistance to an institution of higher education comparable to the technical assistance provided by the Department to schools participating in the Direct Loan Program.

Current Regulations: Prohibited activities by lenders and guaranty agencies are specified in current regulations in §§ 682.200(b) and 682.401(e), respectively. These regulations were amended in 2007 and provide lists of prohibited and permissible activities by lenders and guaranty agencies. The regulations governing the activities of lenders and guaranty agencies are different, most specifically in the area of training for schools (a guaranty agency may pay for travel and lodging for school personnel to attend training programs). The current regulations also permit guaranty agencies to pay school officials to participate on governing boards or advisory committees.

Proposed Regulations: The proposed regulations would incorporate all of the new prohibited and permitted activities for lenders and guaranty agencies as specified in the HEA. Section 682.200(b)(5) of the proposed regulations specifically addresses the prohibition on lenders providing processing, referral or finder fees and expands the prohibition of such payments to institutions, employees of the institutions or to any other party, including a school-affiliated organization or its employees, to secure FFEL loans. The payment of stock, securities or tuition reimbursements is also a prohibited inducement. The proposed regulations prohibit a lender from providing compensation for service on a lender advisory board, commission or other group to an employee who is employed in an institution's financial aid office or to an institutional employee with responsibility for student loans or other financial aid, but would permit the lender to reimburse the employee for reasonable expenses related to service on the board, commission or group. The proposed regulations also specifically prohibit a lender from performing any function for a school that is a requirement of the school except for exit counseling.

Section 682.401(e) of the proposed regulations, which governs guaranty agency prohibited inducements, generally mirrors the proposed regulations for lenders. The proposed regulations would prohibit guaranty agencies from performing any function required by a school under title IV except for exit counseling. Guaranty agencies would be prohibited from providing any payments of stock, securities or tuition reimbursement to any institution of higher education or its employees to secure applicants for FFEL loans, or to any lender, agent, or independent contractor of any lender or guaranty agency to administer or market FFEL loans for the purpose of securing designation as the insurer of the loans. A guaranty agency would not be permitted to pay travel and lodging costs of school employees to attend training conducted by the agency. The proposed regulations would allow for the reimbursement of reasonable expenses incurred by school employees to participate in an agency's advisory committee or governing board activity.

The proposed regulations would prohibit lenders or guaranty agencies from providing staffing services to schools under any conditions. Finally, the proposed regulations would revise the provision that allows a lender or guaranty agency to provide assistance to schools comparable to the assistance that the Secretary provides to schools under the Direct Loan Program by clarifying that the assistance to schools that may be provided is ''technical'' assistance comparable to the technical assistance that the Secretary provides to Direct Loan schools.

Reasons: The proposed changes to the prohibited inducement regulations for both lenders and guaranty agencies reflect statutory changes made by the HEOA.

During the negotiated rulemaking discussions, non-Federal negotiators raised a concern about the prohibition on lenders and guaranty agencies paying processing fees. Some negotiators asked the Department to clarify the term ''processing fees.'' The negotiators were concerned that a broad definition could include permissible borrower benefits on FFEL loans. The Department clarified that, in this context, processing fees do not include permissible borrower benefit programs for student and parent borrowers that may be provided by lenders and guarantors to reduce the cost of borrowing for students and parents.

Another non-Federal negotiator raised a concern that standard commercial practices may be affected by the prohibition on inducements with regard to the payment of processing fees. The Department made it clear that these regulations are not intended to thwart standard business practices unless there is a quid-pro-quo under which a lender pays the processing fees to secure loan applications or volume. The Department believes that these proposed regulations appropriately implement the statute and will not interfere with standard commercial business practices.

Another negotiator raised a concern about what would be deemed ''reasonable'' with regard to the payment of reasonable costs in association with lenders and guaranty agencies paying for items such as meals or refreshments. The Department believes that the regulations are clear in their intent and that the determination of reasonable costs should be considered carefully by FFEL participants and viewed in light of what was deemed by the negotiators the ''prudent person test.''

Disclosure Requirements for Lenders (§ 682.205)

Statute: Section 433 of the HEA requires lenders to provide borrowers a series of informational disclosures throughout the life of a loan. Specific types of disclosures are required based on the borrower's status within the borrowing process, *i.e.,* at or before disbursement, at or before repayment, during repayment, during delinquency, at a time the borrower may be having difficulty making payments, and when the borrower considers taking out a Consolidation loan. Lenders are required to make these required disclosures simple and understandable for the borrower.

The information the lender must disclose to the borrower at or before disbursement of the loan includes: Contact information for the lender; the amount of any charges on the loan, including origination fees and the Federal default fee; the interest rate on the loan; the annual and aggregate maximum amount that may be borrowed, when repayment is required and when interest must be paid, as well as the borrower's right to prepay all or part of the loan at any time without penalty; a statement summarizing the circumstances in which a borrower may obtain a deferment or forbearance; and the options for and requirements for forgiveness of the loan. For borrowers of unsubsidized Stafford loans or borrowers of student PLUS loans, the lender must also provide information about the borrower's right to pay the interest on the loan while the borrower is in school and, if interest is not paid, when and how often the lender will capitalize the interest. For parent PLUS loan borrowers, the lender must provide information about how the parent may defer payment on the loan while the student on whose behalf the parent borrowed is in school at least half-time.

The disclosure information that the lender must provide to the borrower at or before the borrower begins repayment includes: The scheduled date repayment is to begin; the estimated balance, including the amount of interest to be capitalized as of the date on which repayment is to begin; the borrower's repayment schedule; special loan repayment benefits offered on the loan, including those contingent on repayment behavior; any limitations on a repayment benefit provided by the lender; information on how a borrower may lose eligibility for the repayment benefit and whether and how the borrower can regain eligibility for the benefit; a description of how the borrower can avoid or be removed from default; and any additional resources available to the borrower to assist in loan repayment.

While the borrower is in repayment on the loan, the lender must periodically provide additional disclosure information to the borrower. The lender must provide the borrower with a bill or statement that corresponds to each payment installment time period in which a payment is due. That bill or statement must also include: The borrower's original principal loan amount; the borrower's current balance, as of the time of the bill or statement; the interest rate on the loan; the aggregate amount the borrower has paid on the loan, including the amount of interest and fees and the amount paid against the balance; a description of any fees charged on the loan; the date by which the borrower must make a payment to avoid additional fees; and a reminder that the borrower has the option to change repayment plans as well as a list of available repayment plans.

The HEA also requires lenders to make certain disclosures to borrowers who are having difficulty making payments, including: A description of the repayment plans available to the borrower and information as to how the borrower may request a change in his or her repayment plan; the requirements for obtaining forbearance including any cost or fees associated with forbearance; and a description of the options for the borrower to avoid default and any fees or costs associated with each option.

If a borrower is 60 or more days delinquent in making payments, the lender must provide the borrower with information including: The date on which the loan will default if no payments are made; the minimum payment the borrower must make to avoid default; a description of the options available to the borrower to avoid default and any fees or costs associated with each option; discharge options to which the borrower may be entitled; and information about any additional resources available to the borrower, including the Department's Ombudsman's Office, to assist the borrower in loan repayment.

Finally, the HEA requires lenders to provide a separate disclosure for borrowers applying for Consolidation loans. When a lender provides a borrower with an application for a Consolidation loan, the lender must disclose information about the loan including: Whether or not consolidation will result in a loss of loan benefits for the borrower, including loan forgiveness, cancellation, deferment or a reduced interest rate; and if the borrower is consolidating a Perkins Loan, that the borrower will lose interest free periods available on the Perkins Loan while the borrower is enrolled in school at least half-time, in the grace period or in deferment, and that the borrower will lose cancellation benefits available in the Perkins Loan Program. The lender must also provide the borrower with: A list of the Perkins Loan cancellation benefits that would no longer, upon consolidation, be available to the borrower; information about repayment plans available; information about the borrower's option to prepay the Consolidation loan or pay on a shorter repayment schedule; and a notice that applying for the Consolidation loan does not obligate the borrower to agree to take the loan.

Current Regulations: Section 682.205 of the current regulations reflects the pre-HEOA requirements for lender disclosures. Lenders are required to provide information to borrowers at or before the time of loan disbursement, and at or prior to the beginning of repayment. Information that must be disclosed at or prior to disbursement includes: The lender's name and contact information; the principal amount of the loan; the amount of charges to be collected by the lender, including the origination fee and if those charges will be deducted from the loan; the minimum and maximum number of years for repayment; deferment options; collection costs; and the possible effects of accepting the loan on the borrower's eligibility for other aid. The regulations also require borrowers to be made aware that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau.

Information that must be disclosed at or prior to repayment includes: The scheduled date repayment is to begin; the estimated balance on the loan, including estimated interest to be capitalized; the interest rate on the loan; an explanation of fees that may accrue or be charged during the repayment period; and an explanation of special options the borrower may have for consolidating or refinancing the loans and the terms of those options.

Proposed Regulations: Section 682.205 of the proposed regulations would retain the current regulatory language as to required disclosures, but would reorganize this section to accommodate the new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and provided for new requirements at differing points in the repayment cycle of the borrower. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

The proposed regulations would incorporate the requirement for new disclosures by the lender at or prior to disbursement of the loan. In regard to unsubsidized loans, these disclosures must include: An explanation that the borrower may pay accruing interest while in school and, if the interest is not paid, when and how often it will be capitalized; for parent PLUS borrowers, an explanation that the payment may be deferred while the student on whose behalf the parent borrowed is in school as well as, if the interest is capitalized, when and how often it will be capitalized; information on forbearances; and a description of loan forgiveness options and the requirements to receive forgiveness.

The HEOA also changed the numerous references to ''credit bureaus'' to refer to ''consumer reporting agencies'' and the proposed regulations reflect that change.

To incorporate the many new disclosures required during the repayment period of a loan for a borrower, the proposed regulations reorganize § 682.205(c) to better separate and distinguish the different disclosures.

Under proposed § 682.205(c)(2), the lender must disclose to the borrower: Information on any special loan repayment benefits available, the requirements to maintain the benefit, and the impact on the borrower's overall repayment; and any limitations associated with the benefit and the circumstances that would cause the borrower to lose the benefit, as well as how the borrower may be able to regain the benefit. The lender must also provide a borrower with the list of repayment plans available and remind the borrower that he or she may change plans at least once a year. The borrower must be informed about how to avoid default and, if the borrower is in default, how to get out of default. The lender must also provide the borrower with information about additional resources available to assist in loan repayment, including nonprofit organizations, advocates and counselors, and the Department's Ombudsman.

Proposed § 682.205(c)(3) requires lenders to provide specific repayment information to the borrower with a bill or statement that corresponds to each payment installment time period in which a payment is due. That information must include: The original principal amount of the borrower's loan; the current balance as of the time of the bill or statement; the interest rate on the loan; the interest paid by the borrower since the last statement or bill; aggregate totals paid; and a description of each fee the borrower has been charged for the most recent period. The borrower must be told the date by which payments must be made to avoid additional fees and the amount of that payment and the fees. Finally, the lender must remind the borrower of the option to change repayment plans and what plans are available with a link to the Department's Web site for that repayment plan information.

Proposed § 682.205(c)(4) adds a new section of required disclosures for borrowers who contact the lender and inform the lender that they are having difficulty making their required payments. Lenders must inform these borrowers of the repayment plans available, the requirements for forbearance and the options available to avoid default as well as any fees or costs associated with those options.

Proposed § 682.205(c)(5) adds a new section on the required disclosures for borrowers who are 60-days delinquent on repayment of their loans. Lenders must provide borrowers who are 60-days delinquent with information regarding the date on which the loan will default if no payment is made, the minimum payment to avoid default, and the payment amount that would bring the loan to a current status or pay the loan in full. Lenders must inform borrowers about: The options for avoiding default, including deferments and forbearance; any costs associated with those options; and any opportunity for loan discharge the borrower may have. The notice required by § 682.205(c)(5) must be sent to the borrower within five days of the borrower becoming 60-days delinquent, unless the lender has sent the notice within the previous 120 days.

Reasons: The proposed regulations implement statutory requirements.

Negotiators discussed how these disclosures could best be managed in a way that will be most beneficial to borrowers. Negotiators asked if the information required under § 682.205(c)(2)(xiii) needed to be specific to the individual borrower's circumstances, or if the information could be general and outline the options for any borrower to avoid default or to bring a loan out of default. In discussions with the negotiators, the Department agreed it would be permissible for this information, *i.e.,* how a borrower can avoid or remove a default status, to be general, since other required disclosures will provide the borrower with specific information pertaining to their individual circumstances and account information.

Negotiators raised questions about the disclosures required in § 682.205(c)(2)(xiv) and what information would need to be included. The Department believes that these disclosures should provide borrowers with information about an additional set of tools that are available to help them manage their student loan debt. In doing so, lenders need to ensure that borrowers are aware of any appropriate Web sites, organizations, and counseling services of which the lender is aware and that can be of assistance to borrowers when managing the repayment of their debt. The Department agreed to provide lenders a Web link to its Ombudsman's Office. Lenders may provide borrowers seeking to reach the Department's Ombudsman's Office with the following link: *http://www.ombudsman.ed.gov/*.

Some non-Federal negotiators also asked for clarification of when a lender must send the disclosure that is required at or prior to repayment, in accordance with § 685.205(c)(1), in the case of a PLUS loan that immediately enters an in-school deferment status upon the start of the repayment period. Specifically, the negotiators asked if the lender should wait until the end of the in-school deferment period (and any post-enrollment deferment period, if applicable) before sending the disclosure, or if the lender would be required to send the disclosure when the loan has been fully disbursed. The Department noted that a PLUS loan enters the repayment period on the date that the final disbursement of the loan is made. Therefore, the disclosure that is required at or prior to repayment must be sent at or before the time of the final loan disbursement rather than at the end of the deferment period.

A non-Federal negotiator raised a concern about flexibility in the distribution of the disclosures required in this section of the regulations in light of the regulatory authority in 34 CFR 682.205(f) that allows a lender to provide disclosures through written or electronic means. The negotiator wanted to ensure that lenders may provide the disclosures using the method best suited to the borrower's repayment method. The negotiator asked the Department to clarify that a lender would be able to provide the required disclosures through secure e-mail or electronic links to the borrower's account-specific information.

The Department is concerned that the purpose of the statute would not be served if a lender simply provides a general electronic source for a borrower to retrieve the required disclosure information. Lenders may use appropriate electronic methods to provide the required disclosure information directly to the borrower. For example, if the lender sends an e-mail to the borrower containing the required general disclosures as well as a secure link to allow the borrower to obtain specific account information, the lender will have met the requirement. However, if the lender receives information that the e-mail address used is no longer valid or not the borrower's, the lender must take appropriate action as it would in situations when a mailing address used to communicate with the borrower is determined to be incorrect. Similarly, a lender may mail the required general disclosures to a borrower with information about a secure Web site for the borrower to access specific personal account information. If no return mail or evidence of a bad address is received by the lender, the lender may assume the mail has been received. Thus, we are proposing to treat these electronic disclosures similarly to mailed disclosures.

Many non-Federal negotiators assured the Department that the required disclosure information, particularly the borrower-specific account information, could be provided through secure means and could provide confirmation that the borrower has accessed the information. The Department is not requiring lenders to document that the borrower has accessed the information, but would encourage lenders to do so to help identify borrowers who may need additional contact.

The Department does not agree with the suggestion that it would be sufficient for a lender to provide general instructions on a statement, bill, coupon or other form (electronically or by mail) to a borrower that directs the borrower to a particular Web site for disclosure information. This approach would not fulfill the intent of the statute or serve the borrower. The Department fully supports the appropriate use of electronic communication with a borrower, but the Department must also ensure the statute is properly implemented and that borrowers are provided the required information in a manner that best serves both statutory intent and the needs of the borrower.

Negotiators representing the student loan industry raised a concern about the impact of the distribution of the disclosures required by proposed § 682.205(c)(3), those that are required during repayment, on their current loan servicing systems. The Department expects that the disclosures required by § 682.205(c)(3) will be provided in accordance with the lender's or servicer's current account organizational practices. The disclosures may be provided by account or by borrower. The Department understands that lenders and servicers have developed systems to comply with disclosure requirements during repayment and does not intend to require lenders and servicers to unnecessarily alter those systems. Therefore, lenders and servicers may make the disclosures pursuant to § 682.205(c)(3) by loan, by account, or by borrower.

Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan (§ 682.208(e))

Statute: Section 428(b)(2)(F)(i) of the HEA was amended by the HEOA to require that a borrower be provided with additional information when the transfer, sale, or assignment of the borrower's FFEL loan results in a change in the identity of the party to whom payments and communications must be sent. The borrower must now be notified of the effective date of the assignment or transfer of the loan, the date that the current loan servicer will stop accepting the borrower's payments, and the date the new loan servicer will begin accepting those payments.

Current Regulations: Current FFEL Program regulations require that if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan must, within 45 days from the date the assignee acquires the legally enforceable right to receive payment from the borrower on the assigned loan, provide the borrower with a notice, either jointly or separately, that informs the borrower of the assignment, the identity of the party to which the loan is assigned, the name and address of the party to whom the borrower must send subsequent payments or communications, and the telephone numbers of both the assignor and assignee. If a separate notice is sent by each party, each notice must indicate that a corresponding notice will be sent by the other party. The current regulations define assignment for this purpose to mean any kind of transfer of an interest in the loan, including a pledge of such an interest as security. The notification requirements apply if the borrower is in the grace period or has entered repayment on the loan. The assignee, or the assignor on the assignee's behalf, must also notify the guaranty agency of the assignment, and the name, address, and telephone number of the assignee within 45 days of the date the assignee acquires a legally enforceable right to receive payment on the loan.

Proposed Regulations: The proposed regulations incorporate the additional information specified in the HEA that must be provided to a borrower if the assignment or transfer of ownership interest on a FFEL Program loan results in a change in the identity of the party to whom subsequent payments must be sent. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Reasons: The proposed regulations reflect the HEOA changes to the HEA. Notification of the date on which the current servicer will stop accepting payments is not required if the servicer continues to accept payments throughout the assignment process and forwards them on to the assignee. Non-Federal negotiators with knowledge of loan servicing practices indicated that loan servicers do not stop accepting borrower payments during sales, transfers, and assignment.

Forbearance (§ 682.211)

Statute: Section 428(c)(3)(C) of the HEA outlines what disclosures the lender must make to the borrower upon granting forbearance and during a forbearance period. The HEA requires lenders to provide a borrower with information regarding the impact that capitalizing interest will have on the loan and the total balance to be repaid. It requires lenders to provide additional disclosures to borrowers during a forbearance period, including the amount of interest that will be capitalized, the date on which capitalization will occur and the option of the borrower to pay the interest that has accrued before the interest is capitalized.

Current Regulations: Current § 682.211(e) requires the lender to contact a borrower at least once every six months during a period of forbearance only when the forbearance involves the cessation of all payments. The lender must provide the borrower with a reminder of the obligation to repay the loan, the amount of principal and interest on the loan, the fact that interest will continue to accrue and the borrower's or endorser's option to cancel the forbearance at any time.

Proposed Regulations: Section 682.211(e) of the proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The proposed regulations would also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under previous regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

Reasons: The proposed regulations implement statutory requirements.

Some negotiators asked the Department to clarify the new forbearance disclosure requirement as they relate to administrative forbearances. Some negotiators were concerned that lenders will not be able to satisfy the disclosure requirements if an administrative forbearance is granted to provide a borrower assistance with a situation occurring in the past. The Department agreed with the other negotiators that if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. Lenders must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Audit Requirement for a FFEL School Lender or an Eligible Lender Trustee (ELT) That Originates FFEL Loans for a School or School-Affiliated Organization (§§ 682.305(c) and 682.601(a)(7))

Statute: The HEOA added section 435(d)(8) to the HEA which requires any school that serves as a FFEL lender or any eligible lender that serves as an Eligible Lender Trustee (ELT) for a school or school-affiliated organization for the purpose of making FFEL loans to complete and submit annually to the Secretary a compliance audit. The compliance audit must determine that the school or lender: Used all proceeds from special allowance payments, borrower interest payments, interest subsidy payments received from the Department and any proceeds from the sale or other disposition of the loans originated for need-based grants; that no more than a reasonable portion of the proceeds were used for direct administrative expenses; and that the need-based grants made from the proceeds supplemented and did not supplant Federal and non-Federal funds that would otherwise have been used by the school for need-based grant programs.

Current Regulations: Section 682.305(c) of the FFEL Program regulations requires all FFEL lenders that originate or hold at least $5 million in FFEL loans during the lender's fiscal year to complete and submit to the Department an independent annual compliance audit for that year. The audit must be completed by a qualified, independent organization or person. Section 682.601(a)(7) requires a school that makes or originates FFEL loans, regardless of the dollar volume, to submit an annual compliance audit to the Department. For a school that is not a governmental entity or a nonprofit organization, the audit must examine the school lender's compliance with the HEA and applicable regulations, examine the school lender's financial management of its FFEL Program activities, and be conducted in accordance with the standards for audits issued by the United States Government Accountability Office's *Government Auditing Standard* using the procedures outlined in an audit guide produced by the Department's Office of Inspector General. For a school lender that is a governmental entity or a nonprofit organization, the audit must meet the same standards as audits for other school lenders and be conducted in accordance with chapter 75 of title 31 of the United States Code. In addition, in years in which student financial aid is not audited as a ''Major Program,'' as defined under 31 U.S.C. 7501, the school's lending activities, regardless of dollar amount, must be included in the audit as a Major Program.

Proposed Regulations: The proposed regulations would revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The proposed regulations also require that the audit be conducted by a qualified, independent organization or person. A new proposed § 682.305(c)(2)(vii) would govern the compliance audit of a school or school-affiliated organization's lender trustee. The proposed regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The proposed regulations also require that the audit must determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

Reasons: The proposed regulations reflect the HEOA changes made to the HEA provisions governing the compliance audit of a FFEL school lender or an eligible FFEL lender in its capacity as trustee for a school or school-affiliated organization for the purpose of making FFEL loans. The audit determination will ensure that funds received by a school as a lender or through an ELT arrangement with an eligible FFEL lender will be used to benefit students enrolled at the school as intended by the HEA.

Consumer Education Information Provided by Guaranty Agencies (§ 682.401(g))

Statute: The HEOA added a new section 433A to the HEA that requires a guaranty agency to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs. The HEA requires these programs and materials to be in formats that are simple and understandable to students and their families, and specifies that they must be provided before, during, and after a student's enrollment at an institution of higher education. A guaranty agency's activities under section 433A are considered default reduction activities for the purposes of section 422 of the HEA.

A guaranty agency is not prohibited from using existing activities, programs, and materials to meet the requirements of section 433A, and may provide programs or materials similar to the programs and materials required by section 433A to schools that participate only in the Direct Loan Program.

A lender or loan servicer may also provide outreach or financial aid literacy information in accordance with the requirements of section 433A.

Proposed Regulations: The proposed regulations would reflect the requirements of section 433A of the HEA as described above.

Reasons: The proposed changes are necessary to reflect a statutory requirement.

Financial and Economic Literacy for Rehabilitated Borrowers (§ 682.405)

Statute: The HEOA amended section 428F of the HEA to require a guaranty agency to make available financial and economic education materials for a borrower who has rehabilitated a defaulted loan.

Proposed Regulations: The proposed regulations would revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

Reasons: The proposed change is necessary to implement a statutory requirement. Some of the non-Federal negotiators requested clarification of the methods by which a guaranty agency may make the required information available to borrowers who have rehabilitated a defaulted loan. One non-Federal negotiator representing students asked for clarification that the required information must be provided to individual borrowers who have rehabilitated defaulted loans, and not simply made available on a guaranty agency's Web site or in other general materials.

The Department confirmed that a guaranty agency must provide the required financial and economic education materials to each individual borrower who has rehabilitated a defaulted loan. A guaranty agency may provide the required information to individual borrowers by mailing written materials or through electronic means. The materials may provide general financial and economic education information that would be applicable to any borrower, including information on debt management, and need not be specific to the individual borrower's circumstances.

Consumer Credit Reporting Following Loan Rehabilitation (§ 682.405(b)(1)(iii) and (b)(3))

Statute: Section 428F(a)(1)(A) of the HEA was amended by the HEOA to require that, upon sale of a rehabilitated loan to an eligible lender, the guaranty agency or other holder of the loan must request any consumer reporting agency to which the guaranty agency or holder had reported the default of the loan to remove the record of default from the borrower's credit history.

Current Regulations: Section 682.405(b)(3) of the FFEL regulations states that the guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status and that the default is to be removed from the borrower's credit history.

Proposed Regulations: The proposed regulations would require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations would also provide more detailed reporting deadlines for the guaranty agency and the prior loan holder to request removal of the report of the default from the borrower's credit history, and would reduce the overall period for this activity from 90 to 75 days. Under the proposed regulations, the guaranty agency must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The proposed regulations would require the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, to request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

Reasons: The proposed regulations incorporate the HEOA changes to the HEA provisions governing default rehabilitation-related reporting to consumer reporting agencies. Establishing specific deadlines for a guaranty agency's notice to the prior holder and for the guaranty agency and loan holder to make their requests to consumer reporting agencies will ensure that affected borrowers receive the primary loan rehabilitation benefit in a timely and efficient manner.

The Department initially proposed reducing the overall timeframe for reporting to the consumer reporting organizations from the current 90 days to 45 days without separate reporting deadlines for the guaranty agency and loan holder. Several non-Federal negotiators expressed concern that 45 days did not provide sufficient time for both parties to report to consumer reporting agencies and noted that the prior loan holder would not be aware that it was required to initiate such a request unless it was informed by the guaranty agency of the sale. These negotiators also recommended that separate deadlines be established for the guaranty agency and the loan holder so that one party's failure to meet the deadline would not result in a compliance failure for both parties. A non-Federal negotiator familiar with guaranty agency requirements also requested that the Department clarify a guaranty agency's responsibilities when the prior loan holder that reported the default was no longer in existence. The negotiators discussed consumer credit reporting in greater detail, with the Federal negotiator providing an overview of the process and information on the Department's consumer credit reporting process for rehabilitated Direct Loans. In both the FFEL and Direct Loan programs a record of the default, or an equivalent reporting code, is reported by the loan holder (in FFEL) or the Direct Loan servicer and by the guaranty agency (in FFEL) or the Department's debt collection unit (in Direct Loans) and that neither the Department nor a guaranty agency has the authority to request deletion by the consumer reporting organization of another creditor's reported ''trade line.'' If the loan holder that reported a default insurance claim no longer exists, the borrower's recourse is to directly request that the consumer reporting organization remove the defunct loan holder's reported record of default or its equivalent from the borrower's credit history. The Department expects guaranty agencies to assist borrowers to the extent possible under these circumstances by informing the borrower of the identity of the prior holder and of the borrower's right to directly request removal of the default by the consumer reporting agency. However, the Department understands that a guaranty agency's ability to assist borrowers is limited in this area.

Notifications to Borrowers in Default and Definition of Nationwide Consumer Reporting Agency (§§ 682.410(b) and 682.200(b))

Statute: The HEOA amended section 428(k) of the HEA by adding a requirement for guaranty agencies that have received a default claim from a lender to provide the defaulted borrower with at least two separate notices, using simple and understandable terms, that explain, at a minimum, the borrower's options for removing the loan from default, and the fees and conditions associated with each option.

The HEOA also changed all current references to ''credit bureaus'' in the HEA to ''consumer reporting agencies.''

Current Regulations: Section 682.410(b)(5)(ii) requires a guaranty agency, after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against the borrower, to provide the borrower, within a specified timeframe, with a notice that advises the borrower of the actions that will be taken with regard to the default claim and explains the borrower's rights in connection with the claim. Section 682.410(b)(6) specifies the collection efforts that a guaranty agency must take on a defaulted loan.

Proposed Regulations: The proposed regulations would expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The proposed regulations would also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice would have to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

The proposed regulations would also remove the definition of *National credit bureau* from § 682.200(b) and replace it with a definition of *Nationwide consumer reporting agency,* and would replace all references to ''credit bureau'' with ''consumer reporting agency'' throughout § 682.410(b)(5) and (b)(6). The proposed regulations would specify that a nationwide consumer reporting agency is a consumer reporting agency as defined in 15 U.S.C. 1681a.

Reasons: The proposed changes in § 682.410(b) reflect statutory requirements. The proposed definition of *nationwide consumer reporting agency* refers to the definition of this term in the Fair Credit Reporting Act.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to changes related to loan discharge, deferment, consolidation, rehabilitation, and repayment plan provisions, and the addition of a new Part E to title I of the HEA which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs.

In general, these proposed regulations simply restate specific HEOA requirements, in many cases using language drawn directly from the statute. In the following areas, the Secretary has exercised limited discretion in implementing the HEOA provisions through proposed regulations:

Total and permanent disability discharges: The Secretary determined that the monitoring period after a borrower receives a discharge due to total and permanent disability would be three years; that interest would not accrue during this period for loans that are ultimately reinstated; that the employment earnings standard would be based on the poverty guideline amount for a family of two; that, for student loan and TEACH grant disbursements received during the monitoring period, a borrower's obligation to repay a discharged loan will not be reinstated if funds are returned to the holder within 120 days of the disbursement date; and that the Secretary will provide certain information to a borrower as part of a notification to the borrower that his or her obligation to repay a previously discharged loan has been reinstated.

Opportunity to cancel a consolidation loan: The Secretary would require lenders to provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified the lender is ready to make the Consolidation loan, to cancel the loan.

PLUS loan deferment: The Secretary aligned the repayment of a borrower's PLUS loans first disbursed before July 1, 2008, with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period, so that the borrower would begin making payments on all of the loans at the same time.

Income-based repayment: The Secretary determined that a borrower whose outstanding balance has increased rather than decreased throughout the repayment period prior to the borrower's request for IBR should be given the benefit of determining partial financial hardship based on the borrower's increased outstanding loan principal balance.

The Secretary would require that, for married borrowers, joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans be used to determine eligibility for IBR and the partial financial hardship payment amount. That payment amount would then be adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower, with a further adjustment if the borrower has multiple loan holders.

Teacher loan forgiveness: The Secretary determined that the five complete consecutive years of teaching required to qualify for loan forgiveness may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Forbearance: The Secretary determined that, if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. Lenders must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Consumer credit reporting after loan rehabilitation: The Secretary determined that guaranty agencies must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The Secretary also determined that the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, must request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the HEOA provisions. These alternatives are also discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Total and permanent disability discharges: The Department's initial proposals included a 5-year post-discharge monitoring period and interest charges for the period from the date of discharge to the reinstatement date when a borrower's obligation to repay a previously discharged loan is reinstated for failure to meet one of the post-discharge requirements. Non-Federal negotiators did not support these proposals, questioning the rationale for changing the current policies—under which the conditional discharge period is three years and interest is not charged for reinstated loans during the conditional period—in the absence of a specific statutory requirement to do so. After considering the negotiators' concerns, the Department revised the proposed regulations by changing the post-discharge monitoring period from five years to three years, and by removing the provision that would have required a borrower to pay interest from the date of discharge if the borrower's repayment obligation is reinstated.

Under the Department's initial proposal, a borrower's obligation to repay a previously discharged loan would be reinstated if the borrower's annual earnings from employment during the monitoring period exceeded the poverty guideline amount for the borrower's family size. Non-Federal negotiators raised concerns about this proposal, noting that while the proposed approach could be seen as more equitable than the current regulatory approach—under which the criteria for the reinstatement of a loan is tied to poverty guideline amount for a family of two, regardless of the borrower's actual family size—it also could be confusing to borrowers, since a borrower's family size could change during the post-discharge monitoring period. These negotiators argued that the current standard based on a family size of two would be preferable, as it would eliminate the need for borrowers to monitor changes in the employment earnings limit during the post-discharge monitoring period. The Department agreed.

Non-Federal negotiators also raised concerns about the treatment of a title IV loan disbursement made during the post-discharge monitoring period for a loan the borrower received prior to the physician's certification date. The Department initially did address this issue in the proposed regulations because the current regulatory provision, under which a borrower is ineligible for a final discharge unless the borrower ensures that such a disbursement is returned to the loan holder within 120 days of the disbursement date, is tied to the conditional discharge period, which would be eliminated under the proposed regulations. After considering the concerns of the non-Federal negotiators, the Department agreed to change the proposed regulations to provide that a borrower's obligation to repay a discharged loan will not be reinstated if the borrower ensures that a title IV loan or TEACH Grant disbursement made during the post-discharge monitoring period for a loan or TEACH Grant received prior to the discharge date is returned to the loan holder within 120 days of the disbursement date. The Department also agreed to revise the proposed regulations to provide that if a disbursement of a title IV loan or TEACH Grant is made during the period between the physician's certification date and the discharge date, the processing of the borrower's loan discharge request will be suspended until the borrower ensures the disbursement is returned to the loan holder or the Secretary, as applicable.

Lastly, the Department's initial proposal did not explicitly provide that the Secretary would notify a borrower who fails to meet one of the eligibility requirements during the post-discharge monitoring period that the borrower's obligation to repay the discharged loan has been reinstated. In response to serious concerns from non-Federal negotiators, the Department agreed to add a provision to the proposed regulations stating the Secretary will notify a borrower that his or her obligation to repay a previously discharged loan has been reinstated, and that the notification of reinstatement will explain why the obligation was reinstated, that the first payment due date following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement, and how the borrower may contact the Department if he or she has questions or believes the obligation to repay was reinstated based on incorrect information.

Opportunity to cancel a consolidation loan: A number of non-Federal negotiators raised concerns about the requirement that lenders provide Consolidation loan borrowers an explicit period of time to cancel the loan after the date the borrower is notified that the lender is ready to make the Consolidation loan. These negotiators argued that the Department's original proposal to provide a five-day period for a borrower to cancel the loan with the lender lacked clarity and did not fully recognize the highly automated consolidation process in which some loans could be fully processed in as little as 24–48 hours. One negotiator suggested that the Department provide borrowers with the opportunity to expedite processing by waiving their right to cancel the loan. After considering these concerns and suggestions, the Department proposed revised language establishing a timeframe for a borrower to cancel a Consolidation loan that would be similar to the operational timeframe used in the Direct Loan Program, which would be clear and understandable to all participants. This revised proposal is reflected in the proposed regulations.

PLUS loan deferment: A non-Federal negotiator raised concerns that, under the Department's original proposal, borrowers with PLUS loans first disbursed before July 1, 2008, and PLUS loans first disbursed on or after July 1, 2008, could erroneously believe that all their PLUS loans are eligible for the new 6-month post-enrollment deferment period, which is actually only available on PLUS loans first disbursed on or after July 1, 2008. This negotiator suggested, and the Department agreed, that the proposed regulations be revised to provide an administrative forbearance that would allow a lender to align repayment of a borrower's PLUS loans first disbursed before July 1, 2008 with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period.

Income-based repayment: A non-Federal negotiator noted that borrowers whose outstanding loan balance increased after they initially entered repayment and before they request IBR would be disadvantaged under the Department's original proposal to always base a borrower's annual payment amount on the outstanding balance when the borrower initially entered repayment. The negotiator argued that borrowers who have had difficulty repaying the loan and who have taken advantage of deferments and forbearances to avoid delinquency would be particularly disadvantaged as their outstanding loan principal balance would have increased due to capitalized interest. After considering these factors, the Department agreed that, for a borrower whose outstanding balance has increased during the repayment period prior to the borrower's request for IBR, the determination of partial financial hardship should be based on the borrower's increased outstanding loan principal balance.

The Department also considered alternative approaches for determining eligibility for partial financial hardship for married borrowers who file a joint Federal tax return and who both have eligible loans. The Department initially proposed using each individual borrower's portion of the joint AGI and eligible loan amount to determine eligibility for IBR. Following discussions with non-Federal negotiators, the Department determined that this approach would impose significant burdens both on borrowers, who would be required to submit additional documentation to identify the individual portion of any joint income, and loan holders, who would need to determine each borrower's eligibility using a manual process (rather than automated process). As an alternative, the Department agreed to adopt a non-Federal negotiator's suggestion to determine eligibility for IBR using married borrowers' joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans, with the payment amount adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower and with a further adjustment for borrowers with multiple loan holders.

The alternatives adopted would increase Federal costs for fiscal years 2009 through 2019 related to the IBR program by an estimated $101 million compared with baseline estimated costs for the original authorizing legislation. (These costs include the impact of the proposed changes on loans made prior to FY 2009.) The Department does not forecast any new borrowers will choose the IBR repayment schedule beyond those assumed in the baseline because the alternatives adopted were relatively minor and, therefore, not likely to change borrowers' repayment choices. Projected costs were determined based on those borrowers from the 1994 through 2019 cohorts already assumed to choose the IBR repayment schedule. Estimates were derived using data from the Department's Direct Loan servicing system on borrowers who have chosen income-contingent repayment, merged with a statistically significant sample of National Student Loan Data System data. Current Population Survey data from the Census Bureau was used to project borrower incomes. Estimated loan volume associated with borrowers affected by the alternatives adopted is $93 billion over 1994 through 2019.

While the cost of these provisions would normally need to be offset, the Department requested and the Office of Management and Budget granted an exception to budget neutrality requirements. This exception reflects the relatively small cost of the provisions and the fact that in their absence borrowers would be harmed by having unduly high payment amounts or being denied access to IBR entirely. This harm would be most significant to married borrowers with significant student loan debt, including those engaged in public service careers, which often pay less than comparable jobs in the private sector.

Teacher loan forgiveness: The Department's initial proposal allowed only qualifying teaching service performed at an eligible educational service agency after August 14, 2008, the date of enactment of the HEOA, to be counted toward a borrower's required five complete consecutive years of teaching service. A non-Federal negotiator argued that this approach was too restrictive, and that the HEOA's provisions in this area were intended to apply retroactively to October 1, 1998, the date of enactment of the original FFEL and Direct Loan teacher loan forgiveness provisions. While the Department did not agree with this interpretation of the HEOA, the proposed regulations were revised to provide that the required five complete consecutive years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, provided the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Forbearance: Some non-Federal negotiators raised concerns that lenders will not be able to satisfy disclosure requirements if an administrative forbearance is granted to assist a borrower with a situation occurring in the past. The Department, after discussions with other negotiators, agreed that if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. The lender must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Consumer credit reporting after loan rehabilitation: The Department initially proposed reducing the overall timeframe for both guaranty agency and loan holder reporting to the consumer reporting organizations from the current 90 days to 45 days. Non-Federal negotiators argued that 45 days was not enough time for both parties to report to consumer reporting agencies, noting that the prior loan holder would be unaware of the requirement until informed by the guaranty agency of the sale. These negotiators recommended separate deadlines for the guaranty agency and the loan holder to ensure that one party's failure to comply with the deadline would not result in a compliance failure for both parties. After consideration of these concerns, the Department agreed to an alternative approach that would reduce the overall period for this activity from 90 to 75 days. Under this alternative approach, the guaranty agency must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The proposed regulations would require the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, to request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

Benefits

Benefits provided in these proposed regulations include greater transparency for borrowers participating in the Federal and private student loan programs; clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs; improvements to the IBR plan, particularly for married borrowers; a simpler process for obtaining loan discharges due to total and permanent disability; and expanded eligibility for Teacher Loan forgiveness benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the HEOA or of the harm such relationships actually caused for either borrowers, institutions, or the Federal taxpayer. The extent these relationships prevented borrowers from accessing the most favorable loan terms, however, is likely to have changed in any case since recent shifts in economic conditions and lender net revenues have greatly reduced the availability of borrower benefits in the FFEL program. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

These benefits all flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations. As discussed in greater detail under *Net Budget Impacts,* these proposed provisions result in net costs to the government of $192.7 million over 2009–2013.

Costs

Many of the statutory provisions implemented though this NPRM will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other proposed regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to the process for loan discharges, IBR, and various deferment and forbearance benefits—rather than wholly new requirements. In total, these changes are estimated to increase burden on entities participating in the FFEL program by 1,313,964 hours. Of this increased burden, 1,184,115 hours are associated with lenders, 110,360 hours with guaranty agencies, and 7,200 hours with institutions. An additional 12,289 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $24,334,225.

While there is additional burden associated with a range of proposed provisions in this NPRM, nearly 95 percent of the burden hours associated with this package result from six provisions, all with a burden greater than 20,000 hours. In estimating the cost of these provisions, the Department used wage information from the Bureau of Labor Statistics. For lenders, institutions, and guaranty agencies, the May 2009 total private non-agricultural average hourly earnings of $18.54 was used as the hourly rate to monetize the burden of these provisions. For borrowers, the first quarter 2009 median weekly earnings for full-time wage and salary workers by age range were used. This was weighted to reflect the age profile of the student loan portfolio, with 50 percent of the portfolio assigned to the 20-to-24 age category and 50 percent to the 25-to-34 age category. Using median weekly earnings of $472 for workers in the 20-to-24 age category and $674 for workers in the 25-to-34 age category and assuming a 35-hour work week, the Department calculated an hourly rate of $16.37 to use in monetizing the burden on borrowers. The following discussion provides additional detail on the impact of these provisions.

The greatest number of burden hours is associated with proposed § 682.205, which implements new statutory requirements for lenders to disclose specified information to borrowers throughout the life-cycle of the loan. These required disclosures include information about a 10-day cancellation period for consolidation loans, the availability of forbearance and its effects, discharge options, repayment plans, and resources available to borrowers, among others. The Department determined that the lenders will have increased burden due to the additional disclosures for two groups of borrowers: Borrowers that are having difficulty making payments, and borrowers that are 60-days delinquent. There is no additional burden associated with the disclosures that loan holders are already required to make to borrowers prior to and during repayment. An estimated 4,692,126 borrowers fall within these two categories with additional burden, and the burden of developing and distributing the new disclosures is estimated to be .17 hours per borrower, for a total burden of 797,661 hours for this provision. Using the lender rate of $18.54 per hour, the cost associated with this provision is $14.8 million.

The next highest number of burden hours is associated with proposed § 682.211, which specifies lender disclosure requirements related to forbearance and creates a new administrative forbearance to align repayment of PLUS loans. Lenders must disclose the effect of interest capitalization and the total to be repaid during the life of a loan under this provision. An estimated 215,734 borrowers are affected by this provision, and the hour burden on lenders is estimated to be .03 hours per borrower, for a total of 215,734 hours. Therefore, the cost associated with this provision is approximately $4.0 million.

An estimated 90,286 burden hours are associated with § 682.215 and § 685.221, the provisions related to the definition of partial financial hardship and the calculation of the borrower's payment under income-based repayment plans. The change in the method of calculating an income-based repayment will increase burden to loan holders by .08 hours per borrower. The number of borrowers expected to qualify for IBR is 1,128,579, generating a total burden of 90,286. Using the lender rate, the cost associated with this provision is $1.7 million.

Another provision that has an estimated burden greater than 20,000 hours is § 682.206, which requires lenders to offer consolidation borrowers a 10-day cancellation period. The burden of this provision falls on borrowers, who have to read the disclosure about cancellations and act if they want to pursue that option, and lenders, who have to provide the disclosure about cancellation and delay loan processing to allow cancellations. An estimated 10,032 FFEL consolidation borrowers are affected by this provision, with an estimated burden of one hour for a total of 10,032 hours. For lenders, the burden of providing application disclosures to approximately 670,753 potential consolidation loan applicants and information about cancellations to approximately 11,147 consolidated borrowers, calculated at a rate of .08 hours per borrower, totals 54,552 hours. Applying the appropriate rates for borrowers and lenders, the total cost associated with this provision is $1.2 million.

An estimated 58,793 burden hours are associated with § 682.410, the provision requiring guaranty agencies to provide certain notifications to borrowers who are in default. Guaranty agency default notices must include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. Approximately 734,918 borrowers in default are affected by this provision, with a burden of .08 hours per borrower. At the guaranty agency rate of $18.54 per hour, the cost associated with this provision totals $1.1 million.

The final provision estimated to result in over 20,000 burden hours is § 682.405, which requires guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans. Guaranty agencies are required to provide financial and economic educational materials to borrowers who have rehabilitated loans. Given an estimated 143,687 rehabilitated loans and an increase in burden of .17 hours per loan, the burden hours associated with this provision total 24,427. Applying the guaranty agency rate, the cost associated with this provision totals $0.5 million.

The other provisions that increase burden and associated costs are relatively minor, especially when looked at for an individual entity rather than in total. In general, entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these provisions. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant for some entities, are an unavoidable—and in most cases minor—cost of continued program participation. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities.

Given the limited data available, the Department is interested in comments and supporting information related to possible burden stemming from the proposed regulations. In particular, we ask institutions to provide detailed data on actual staffing and system costs associated with implementing these proposed regulations; data on the implementation of proposed regulations regarding the adoption and distribution of required disclosures would be especially helpful. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

HEOA provisions implemented by these regulations are estimated to have a net budget impact of $34.7 million in 2009 and $192.7 million over FY 2009–2013. (The estimated impact for 2009 does not include $144.2 million in costs related to loans originated in prior fiscal years.) Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's (OMB's) Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, however, in developing the Accounting Statement included below, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Proprietary schools, two-year schools, freshmen/sophomores at four-year schools, juniors/seniors at four-year schools, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The budgetary impact of the proposed regulations is largely driven by statutory changes involving teacher loan forgiveness, loan discharges, and IBR. The Department estimates no budgetary impact for other proposed regulations included in this NPRM; there is no data indicating that the new requirements related to improper inducements and additional loan disclosures will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources was used, including data from the NSLDS; operational and financial data from Department systems; and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the Census Bureau, were also used. Data on administrative burden at participating schools, lenders, guaranty agencies, and third-party servicers are extremely limited; accordingly, as noted above, the Department is particularly interested in comments in this area.

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.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES
[In millions]

Category	Transfers
Annualized Monetized Transfers	$57.
From Whom To Whom?	Federal Government to Student Loan Borrowers.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ‘‘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?

To send any comments that concern how the Department could make these proposed regulations easier to understand, *see* the instructions in the **ADDRESSES** section of this 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 Size Standards define institutions and lenders as ‘‘small entities’’ if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

Based on data from the Integrated Postsecondary Education Data System (IPEDS), roughly 1,200 institutions participating in the FFEL program meet the definition of ‘‘small entities.’’ More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and Tribally controlled schools. Burden on institutions associated with these proposed regulations is associated with audit requirements for schools serving as lenders. Institutions meeting the definition of small entities are extremely unlikely to act as lenders in the FFEL program. Accordingly, new requirements imposed under the proposed regulations are not expected to impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. FFEL program activity is highly concentrated among the largest lenders; should an extremely small number of lenders that meet the threshold participate in the program, they likely are making loans as a service to current clients rather than soliciting new business. This type of lender, with a tangential relationship to Federal student loans, is extremely unlikely to engage in the type of activities—inducements, *etc.*—governed by these regulations. Accordingly, the Department has determined that the regulations would not represent a significant burden on small lenders.

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. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

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

Proposed 674.61, 682.202, 682.205, 682.206, 682.208, 682.210, 682.211, 682.216, 682.302, 682.305, 682.401, 682.402, 682.410, 682.601, 685.202, 685.204, 685.205, 685.213, and 685.217 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.

Sections 674.61, 682.402, and 685.213—Total and Permanent Disability Loan Discharges

The proposed regulations would revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on a total and permanent disability. The proposed changes to the loan discharge process affect borrowers, loan holders (and their servicers), and guaranty agencies.

The burden hour estimate associated with the current total and permanent disability loan discharge provisions is reported under OMB Control Number 1845–0065 (Discharge Application: Total and Permanent Disability). The Department does not expect the proposed changes to increase the burden for this collection. However, the Department will need to revise the Discharge Application: Total and Permanent Disability currently approved under 1845–0065 to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.

Section 682.206—Consolidation Loans

The proposed regulations would revise § 682.206(f) to incorporate a new requirement that is needed to fully implement proposed § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to take the loan. Specifically, § 682.206(f) would be revised to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The proposed regulations would require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

We estimate that the proposed changes will increase burden for borrowers by 10,032 hours and for loan holders (and their servicers) by 54,552 hours for a total increase in burden of 64,584 hours in OMB Control Number 1845–0020.

Sections 682.210, 682.211, 685.204 and 685.205—In-School Deferments and Administrative Forbearance for PLUS Loans

The proposed regulations would revise §§ 682.210 and 685.204 to reflect statutory deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008. Upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the proposed regulations would provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from NSLDS confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The proposed regulations would also add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment of the loans with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford loans that are subject to a grace period. The lender would be required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision would be added to § 685.205(b) in the Direct Loan Program regulations.

The proposed changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The new deferment provisions for certain PLUS borrowers are expected to increase the number of borrowers who apply for deferments. Because these statutory provisions could be implemented without regulations, the FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL Program Deferment Request Forms) and 1845–0011 (Direct Loan Program Deferment Request Forms). The increased burden associated with the proposed regulatory changes is reflected in the burden estimates reported under those control numbers.

We estimate that the proposed regulations in § 682.211(e) related to administrative forbearances will increase burden for loan holders by 14,440 hours in OMB Control Number 1845–0020.

Sections 682.215 and 685.221—Income-Based Repayment (IBR) Plan

The proposed regulations would revise the definition of partial financial hardship in § 682.215(a)(4) and 685.221(a)(4) to specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans when the borrower initially entered repayment on those loans, or the amount due on those loans when the borrower elects the IBR plan. The proposed regulations would also provide that when a married borrower and his or her spouse file a joint Federal tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

The proposed regulations would revise §§ 682.215(b)(1)and 685.221(b)(2) to provide that if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with all other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders.

We estimate that the proposed regulations will increase burden for loan holders by 90,286 hours in OMB Control Number 1845–0020.

Sections 682.202, 682.302, and 685.202—Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans

The proposed regulations would revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The proposed regulations would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that, for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, the FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

We estimate that the proposed regulations will increase burden for borrowers by 1,694 hours and for loan holders by 542 hours in new OMB Control Number 1845–XXX1. We estimate that the proposed regulations will increase burden for borrowers by 563 hours in new OMB Control Number 1845–XXX2.

Sections 682.210 and 685.204—In-School Deferment

The proposed regulations would revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender would also be required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments would be removed from § 682.210(c)(2) of the FFEL regulations. A comparable change would be made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

The proposed changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The FFEL and Direct Loan deferment request forms currently approved under OMB Control Numbers 1845–0005 and 1845–0011 already include the information that a loan holder must provide to a borrower at or before the time a deferment is granted, as described above. Therefore, there is no increase in burden associated with the proposed regulations.

Sections 682.216 and 685.217—FFEL and Direct Loan Program Teacher Loan Forgiveness

The proposed regulations would allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more eligible elementary or secondary schools that serve low-income families, or one or more eligible educational service agencies that serve low-income families. A borrower could also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible for teacher loan forgiveness purposes, an educational service agency would have to meet the same eligibility requirements that apply to elementary and secondary schools.

The proposed changes will increase the number of borrowers who are eligible for teacher loan forgiveness, and will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application that is currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.

Section 682.205—Disclosure Requirements for Lenders

The proposed regulations would reorganize and expand § 682.205 to reflect new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and requires new disclosures at differing points in the borrower's repayment cycle. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

We estimate that the proposed regulations will increase burden for loan holders (and their servicers) by 797,661 hours in OMB Control Number 1845–0020.

Section 682.208—Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan

The proposed regulations incorporate three additional information items specified in the HEA that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent. The three additional data items are: (1) The effective date of the assignment or transfer of the loan; (2) the date on which the current loan servicer will cease accepting payments; and (3) the date on which the new loan servicer will begin accepting payments. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Loan holders are already required, under current regulations, to provide certain information to a borrower if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send payments. The proposed regulations merely add three additional items to the notice that a loan holder is already required to provide. Therefore, the Department believes that the proposed regulations will not significantly increase burden for loan holders (and their servicers) in OMB Control Number 1845–0020.

Section 682.211—Forbearance

Section 682.211(e) of the proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The proposed regulations would also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under existing regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

We estimate that the proposed regulations will increase burden for loan holders (and their servicers) by 215,734 hours in OMB Control Number 1845–0020.

Sections 682.305 and 682.601—Audit Requirements for a FFEL School Lender or an Eligible Lender Trustee (ELT)

The proposed regulations would revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The proposed regulations also require that the audit be conducted by a qualified, independent organization or person. A new proposed § 682.305(c)(2)(vii) would govern the compliance audit of a school or school-affiliated organization lender trustee. The proposed regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The proposed regulations also require that the audit determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

We estimate that the proposed regulations will increase burden for institutions by 7,200 hours and for loan holders (and their servicers) by 10,900 hours for a total increase in burden of 18,100 hours in OMB Control Number 1845–0020.

Section 682.401—Consumer Education Information Provided by Guaranty Agencies

The proposed regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

We estimate that the proposed regulations will increase burden for institutions and guaranty agencies by 8,748 hours in OMB Control Number 1845–0020.

Section 682.405—Financial and Economic Literacy for Rehabilitated Borrowers

The proposed regulations would revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

We estimate that the proposed regulations will increase burden for guaranty agencies by 24,427 hours in OMB Control Number 1845–0020.

Section 682.405—Consumer Credit Reporting Following Loan Rehabilitation

If a borrower successfully rehabilitates a previously defaulted loan, the proposed regulations would require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations would also provide more detailed reporting deadlines for the guaranty agency and prior loan holder to request removal of the report of the default from the borrower's credit history, and would reduce the overall period for this activity from 90 to 75 days.

We estimate that the proposed regulations will increase burden for guaranty agencies by 18,392 hours in OMB Control Number 1845–0020.

Section 682.410—Notifications to Borrowers in Default

The proposed regulations would expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The proposed regulations would also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice would have to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

We estimate that the proposed regulations will increase burden for guaranty agencies by 58,793 hours in OMB Control Number 1845–0020.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
674.61, 682.402, and 685.213.	The proposed regulations would revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on total and permanent disability. Borrowers who apply for a total and permanent disability discharge must complete a discharge application that collects the information needed to determine their eligibility for discharge.	OMB 1845–0065. The Discharge Application: Total and Permanent Disability that is currently approved under 1845–0065 will be revised to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.
682.206	§ 682.206(f) would be amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan.	OMB 1845–0020.
682.210, 682.211, 685.204 and 685.205.	The proposed regulations implement new deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008 that were added to the HEA by the HEOA. A loan holder must collect the information needed to determine that a borrower is eligible for a deferment.	OMB 1845–0005, 1845–0011 and 1845–0020. The FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL) and 1845–0011 (Direct Loan).

Regulatory section	Information collection	Collection
682.202, 682.302, and 685.202.	The proposed regulations provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status.	OMB 1845–XXX1 and 1845–XXX2. These will be new collections. A separate 60-day **Federal Register** Notice will be published to solicit comments.
682.210 and 685.204	The proposed regulations would require a loan holder to provide information about interest capitalization to a borrower prior to or at the time of granting a deferment on an unsubsidized loan.	OMB 1845–0005 and 1845–0011. These collections (FFEL and Direct Loan Program deferment request forms) were previously revised to include the required information about interest capitalization and have been approved by OMB.
682.215 and 685.221	The proposed regulations would revise the definition of partial financial hardship for purposes of determining a borrower's eligibility for the income-based repayment plan and would also revise the provisions governing a loan holder's calculation of a borrower's income-based payment amount.	OMB 1845–0020.
682.216 and 685.217	The proposed regulations would expand eligibility for teacher loan forgiveness to allow a borrower who otherwise meets the loan forgiveness eligibility requirements to receive forgiveness based on teaching service performed at one or more eligible educational service agencies that serve low-income families.	OMB 1845–0059. The proposed changes will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.
682.205	The proposed regulations implement new statutory requirements for lenders to disclosure certain information to borrowers at various points during the lifecycle of a borrower's loan. The proposed regulations also add new lender disclosure requirements for consolidation loan borrowers.	OMB 1845–0020.
682.208	The proposed regulations incorporate three additional information items that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent.	OMB 1845–0020.
682.211	The proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total to be repaid over the life of the loan.	OMB 1845–0020.
682.305 and 682.601	The proposed regulations would amend § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated.	OMB 1845–0020.
682.401	The proposed regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs to provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.	OMB 1845–0020.
682.405	The proposed regulations would require guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans.	OMB 1845–0020.
682.405	The proposed regulations would require the prior holder of a previously defaulted loan, in addition to the guaranty agency, to request that consumer reporting agencies remove the record of the default from the borrower's credit history after the borrower has successfully rehabilitated the loan.	OMB 1845–0020.
682.410	The proposed regulations require guaranty agencies to provide certain additional notifications to borrowers who are in default.	OMB 1845–0020.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact 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.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 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 13, 2009.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR chapter VI as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

2. Section 674.9 is amended by:

A. Revising paragraph (g).

B. In the introductory text of paragraph (h), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

C. In paragraph (h)(1), removing the words ''paragraphs (h)(1) and (h)(2)'' and adding, in their place, the words ''paragraphs (g)(1) and (g)(2)''.

D. In paragraph (h)(2)(ii), removing the words '', as described in § 674.61(b)(9)'' immediately after the word ''period''.

E. In the second sentence of paragraph (i), removing the words ''described in §§ 674.61(b), 682.402(e), or 685.213(a)'' immediately after the word ''period''.

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(g) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability—

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

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

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

* * * * *

3. Section 674.51 is amended by:

A. Revising paragraph (d).

B. Redesignating paragraphs (e) through (s) as follows:

Old paragraph	New paragraph
674.51(e)	674.51(f)
674.51(f)	674.51(h)
674.51(g)	674.51(l)
674.51(h)	674.51(m)
674.51(i)	674.51(n)
674.51(j)	674.51(p)
674.51(k)	674.51(q)
674.51(l)	674.51(r)
674.51(m)	674.51(s)
674.51(n)	674.51(t)
674.51(o)	674.51(u)
674.51(p)	674.51(w)
674.51(q)	674.51(y)
674.51(r)	674.51(z)
674.51(s)	674.51(aa)

C. Adding new paragraphs (e), (g), (i), (j), (k), (o), (v), (x), and (bb).

D. In newly redesignated paragraph (f), removing the number ''672(2)'', and adding, in its place, the number ''632(4)''.

E. Revising newly redesignated paragraph (n).

F. In newly redesignated paragraph (t), by removing the number ''672(2)'', and adding, in its place, the number ''632''.

G. Revising newly redesignated paragraph (aa).

H. Revising the authority citation that appears at the end of the section.

The revisions and additions read as follows:

§ 674.51 Special definitions.

* * * * *

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section

3006A(g)(2)(B) of title 18, United States Code.

* * * * *

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, or full professor, dean or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

(1) Providing community disaster support and, as a first responder, providing emergency medical services;

(2) Conducting search and rescue; or

(3) Providing hazardous materials mitigation (HAZMAT).

* * * * *

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

* * * * *

(v) *Speech language pathologist with a master's degree:* An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both.

* * * * *

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

* * * * *

(aa) *Total and permanent disability:* The condition of an individual who—

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

(i) Can be expected to result in death;

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

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

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

(bb) *Tribal College or University:* An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

* * * * *

4. Section 674.61 is amended by:

A. Revising paragraph (b).

B. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

C. Adding a new paragraph (c).

The revision and addition read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1)*—

(1) *General.* A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(1), a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1).

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(*2*) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for an FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(5) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iii) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(i) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for an FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(5)(i) of this section, the borrower or, if applicable, the borrower's representative—

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

(ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(5)(i)(A) of this section; and

(iii) Must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan prior to the Secretary's determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician certified the borrower's loan discharge application to the person who made the payments on the loan.

(c) *Total and permanent disability discharges for veterans*—(1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(2), a veteran must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) With the application, the veteran must submit documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

(A) The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2);

(B) The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2); and

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in § 674.61(b).

(iv) If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.

(v) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must resume collection on the loan.

(4) *Secretary's determination of eligibility*. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must—

(A) Discharge the veteran's obligation to make further payments on the loan; and

(B) Return to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must resume collection on the loan.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

6. Section 682.200(b) is amended by:

A. Revising paragraph (5) of the definition of ''Lender.''

B. Removing the definition of ''National credit bureau.''

C. Adding a definition of ''Nationwide consumer reporting agency.''

D. Adding a definition of ''Substantial gainful activity.''

E. Revising the definition of ''Totally and permanently disabled.''

The revisions and additions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender. * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person entrance counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency as defined in 15 U.S.C. 1681a.

* * * * *

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

* * * * *

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

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

(i) Can be expected to result in death;

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

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

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

* * * * *

7. Section 682.201 is amended by:

A. In paragraph (a)(4)(i), removing the words ''legal costs, and late charges'' and adding, in their place, the words ''court costs, attorney fees, and late charges''.

B. In paragraph (a)(5), removing the words ''under § 682.402(c)''.

C. Revising paragraph (a)(6)(iii).

D. In the introductory text of paragraph (a)(7), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

E. In paragraph (a)(7)(ii)(B), removing the words '', as described in paragraph 682.402(c)(16)''.

F. In paragraph (e)(4), adding the words ''is in default or'' immediately after the first appearance of the words ''consolidation loan'' and adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

G. In paragraph (e)(5), adding the words '', or the no accrual of interest benefit for active duty service'' immediately after the words ''Public Service Loan Forgiveness Program''.

The revision reads as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(6) * * *

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

* * * * *

8. Section 682.202 is amended by:

A. In the introductory text of paragraph (a), adding the words ''and (a)(8)'' after the reference ''(a)(4)''.

B. Adding a new paragraph (a)(8).

C. In paragraph (b)(2)(i), adding the words ''or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins'' immediately before the semicolon.

The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made

prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

9. Section 682.205 is amended by:

A. In paragraph (a)(2)(vi), removing the words ''insurance premium'' and adding, in their place, the words ''Federal default fee'', and adding, immediately before the semicolon, the words ''or paid by the lender''.

B. In paragraph (a)(2)(ix), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

C. In paragraph (a)(2)(x), adding, immediately before the semicolon, the words '', and a description of the types of repayment plans available''.

D. In paragraph (a)(2)(xvi), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

E. In paragraph (a)(2)(xviii), removing the words ''in the making or'' and adding, in their place, the words ''during repayment or in the''; adding the words ''including any fees the borrower may be charged'' immediately after the words ''the loan,''; and removing the words ''; and'' at the end of the paragraph and adding, in their place, the punctuation '';''.

F. In paragraph (a)(2)(xx), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

G. Adding new paragraphs (a)(2)(xxi), (a)(2)(xxii), (a)(2)(xxiii), and (a)(2)(xxiv).

H. In paragraph (b), in the second sentence, adding the words '', and that the default will be reported to each nationwide consumer reporting agency'' immediately after the word ''loan''.

I. In paragraph (c), in the heading, removing the words ''Disclosure of repayment'' and adding, in their place, the word ''Repayment''.

J. In paragraph (c)(1), adding the heading ''Disclosures at or prior to repayment.'' immediately after the paragraph designation ''(1)''; removing the words ''Federal SLS'' and adding, in their place, the words ''Federal PLUS''; and removing the words ''240 days'' and adding, in their place, the words ''150 days''.

K. In paragraph (c)(2)(ii), adding the words '', or a deferment under § 682.210(v), if applicable, is to end'' immediately after the word ''begin'' at the end of the sentence.

L. In paragraph (c)(2)(iii), adding the words ''a deferment under § 682.210(v), if applicable, is to end,'' immediately after the word ''begin''.

M. In paragraph (c)(2)(vi), adding the words ''based on the repayment schedule selected by the borrower'' immediately after the word ''payments''.

N. In paragraph (c)(2)(viii), adding the words ''if interest has been paid, the amount of interest paid'' immediately after the words ''; and''.

O. In paragraph (c)(2)(ix), removing the punctuation ''.'' at the end of the sentence and adding, in its place, the punctuation '';''.

P. Adding new paragraphs (c)(2)(x), (c)(2)(xi), (c)(2)(xii), (c)(2)(xiii) and (c)(2)(xiv).

Q. Adding new paragraphs (c)(3), (c)(4) and (c)(5).

R. In paragraph (d), adding the words ''Federal Unsubsidized Stafford loan or a'' immediately after the words ''In the case of a'' at the beginning of the first sentence and removing the words ''the student'' in the first sentence and adding, in their place, the words ''the borrower or student on whose behalf the loan is made''.

S. Adding new paragraph (i).

T. Adding new paragraph (j).

The additions read as follows:

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(1) * * *

(2) * * *

(xxi) For unsubsidized Stafford or student PLUS borrowers, an explanation that the borrower may pay the interest while in school and, if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized;

(xxii) For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time and, if the parent does not pay interest while the student is in school, when and how often interest will be capitalized, and that the parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time;

(xxiii) A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan; and

(xxiv) A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness.

* * * * *

(c) * * *

(2) * * *

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

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

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

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

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

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

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

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

(iii) The interest rate on the loan;

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

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

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

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

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

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

(4) *Required disclosures for borrowers having difficulty making payments.* The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

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

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

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

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

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

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

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

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

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

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

* * * * *

(i) *Separate disclosure for Consolidation loans.* At the time the lender provides a Consolidation loan application to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms—

(1) Whether consolidation will result in a loss of loan benefits, including, but not limited to, loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the Consolidation loan, that the borrower will lose—

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the Consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a Consolidation loan vary among lenders;

(6) The consequences of default on the Consolidation loan; and

(7) That applying for the Consolidation loan does not obligate the borrower to agree to take the Consolidation loan, and the process and deadline by which the borrower may cancel the Consolidation loan.

(j) *Disclosure procedures when a borrower's address is not available.* If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

10. Section 682.206 is amended by revising paragraph (f) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(f) *Additional requirements for Consolidation loans.* (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(A) The loan is a legal, valid, and binding obligation of the borrower;

(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of § 682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower's option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

11. Section 682.208 is amended by:

A. In paragraph (e)(1) introductory text, adding the words ''or transfer of ownership interest'' immediately after the word ''assignment''.

B. In paragraph (e)(1)(iii), removing the word ''and'' after the semicolon.

C. In paragraph (e)(1)(iv), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

D. Adding new paragraphs (e)(1)(v), (vi), and (vii).

The additions read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e) * * *

(1) * * *

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

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

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

* * * * *

§ 682.209 [Amended]

12. Section 682.209 is amended in paragraph (a)(2)(v) by removing the reference ''(a)(2)(ii)'' and adding, in its place, the reference ''(a)(2)(i)''.

13. Section 682.210 is amended by:

A. In paragraph (a)(1)(i), adding the words ''and paragraphs (s) through (v)'' after the words ''paragraph (b)''.

B. Revising paragraph (a)(3).

C. In paragraph (c)(1)(ii), removing the word ''or'' at the end of the paragraph.

D. In paragraph (c)(1)(iii), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.

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

F. Revising paragraph (c)(2).

G. In paragraph (c)(3), removing the word ''SSCR'' and adding, in its place, the words ''Student Status Confirmation Report''.

H. Adding a new paragraph (v).

The revisions and additions read as follows:

§ 682.210 Deferment.

(a) * * *

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

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

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

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

* * * * *

(c) * * *

(1) * * *

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

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

* * * * *

(v) *In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on § 682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by § 682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

14. Section 682.211 is amended by:

A. Revising paragraph (e).

B. In paragraph (f)(11), removing the word ''or'' at the end of the paragraph.

C. In paragraph (f)(12), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

D. In paragraph (f)(13), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

E. In paragraph (f)(14), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

F. Adding new paragraph (f)(15).

The revisions and additions read as follows:

§ 682.211 Forbearance.

* * * * *

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

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

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

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

(f) * * *

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under § 682.209(a)(3). The notice specified in paragraph (f) introductory text must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

15. Section 682.215 is amended by:

A. Revising paragraph (a)(4).

B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

C. In paragraph (b)(1)(i), removing the word ''The'' at the beginning of the paragraph and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the''.

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

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

F. In newly redesignated paragraph (b)(1)(iii), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

G. In newly redesignated paragraph (b)(1)(iv), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

H. In paragraph (b)(2), removing the words ''(b)(1)(ii) and (iii)'' in the second sentence and adding, in their place, the words ''(b)(1)(iii) and (iv)''.

The revision and addition reads as follows:

§ 682.215 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(1) * * *

(ii) Both the borrower and the borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the loan holder determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(1)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

* * * * *

16. Section 682.216 is amended by:

A. Revising paragraph (a).

B. In paragraph (b), adding, in alphabetical order, a definition of *Educational service agency.*

C. Revising the introductory text of paragraph (c)(1).

D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school'' immediately after the words ''teaching and''.

G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.

J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

K. Adding a new paragraph (c)(3)(iii).

L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.

N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

O. Adding a new paragraph (c)(4)(iii).

P. Revising paragraph (c)(9).

Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 682.216 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been after the 1997–1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or at an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * *

(3) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(4) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been the 2008–2009 academic year or a subsequent academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) 34 CFR 685.217;

(ii) Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

* * * * *

17. Section 682.302 is amended by adding a new paragraph (h) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(h) *Calculation of special allowance payments for loans subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

18. Section 682.305 is amended by:

A. Revising paragraph (c)(1).

B. In paragraph (c)(2)(v), removing the word ''and'' immediately after the semicolon

C. In paragraph (c)(2)(vi), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

D. Redesignating paragraph (c)(2)(vii) as paragraph (c)(3).

E. Adding a new paragraph (c)(2)(vii).

The revision and addition read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

* * * * *

(c) *Independent audits.* (1)(i) A lender originating or holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) Notwithstanding the dollar volume of loans originated or held, a school lender under § 682.601 or a lender serving as trustee on behalf of a school or a school-affiliated organization for the purpose of originating loans must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(iii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

(2) * * *

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that—

(A) Except as provided in paragraph (c)(2)(vii)(B) of this section, the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students; and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with § 682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

* * * * *

19. Section 682.401 is amended by:

A. In paragraph (e)(1)(i), adding the words ''stock or other securities, tuition payment or reimbursement'' immediately after the word ''payment''.

B. In paragraph (e)(1)(i)(D), adding the words ''travel or'' immediately after the words ''Payment of''.

C. Revising paragraph (e)(1)(i)(F).

D. In paragraph (e)(1)(iii)(C), removing the word ''and'' immediately after the semicolon.

E. In paragraph (e)(1)(iii)(D), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

F. Adding new paragraphs (e)(1)(iii)(E), (F), and (G).

G. In paragraph (e)(1)(v), adding the words '', terms or conditions'' immediately after the word ''availability''.

H. In paragraph (e)(2)(i), removing the word ''Assistance'' at the beginning of the paragraph and adding, in its place, the words ''Technical assistance'', and removing the words ''that provided'' and adding, in their place, the words ''the technical assistance provided''.

I. In paragraph (e)(2)(ii), adding the words ''and 433A'' immediately after the reference to ''422(h)(4)(B)''.

J. In paragraph (e)(2)(iii), removing the words ''initial and exit'' and adding, in their place, the word ''entrance''.

K. Revising paragraph (e)(2)(vi).

L. In paragraph (e)(3)(iii), removing the words ''The terms'' and adding, in their place, the words ''The term'', and removing the words ''computer hardware'' and adding, in their place, the words ''information technology equipment''.

M. Removing paragraph (e)(3)(v).

N. Adding a new paragraph (g).

The revision and additions read as follows:

§ 682.401 Basic Program Agreement.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(F) Performance of, or payment to a third party to perform, any school function required under title IV, except that the guaranty agency may provide exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.

* * * * *

(iii) * * *

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing payments of stocks or other securities.

* * * * *

(g)(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(2) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

20. Section 682.402 is amended by revising paragraph (c) to read as follows:

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

* * * * *

(c)(1) *Total and permanent disability*. (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (7) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(8) of this section.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period

described in paragraph (c)(5)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(5)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Lender and guaranty agency actions.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Receives annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Services Block Grant;

(*2*) Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

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

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

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

(8) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b)—(i) General.* After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(ii) *Lender and guaranty agency actions.* (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(B) If the veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must submit a disability claim to the guaranty agency.

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender—

(*1*) Must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(*2*) Must inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in § 682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim and notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged. Upon receipt of the claim payment from the guaranty agency, the lender returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

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

* * * * *

21. Section 682.405 is amended by:

A. In paragraph (a)(3), adding the sentence ''Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.'' at the end of the paragraph.

B. In paragraph (b)(1)(iii), adding the words ''by the guaranty agency or its agents'' immediately after the word ''affordable''.

C. Revising paragraph (b)(3).

D. Adding a new paragraph (c).

The revision and addition read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(3) (3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

* * * * *

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

22. Section 682.410 is amended by:

A. In paragraph (b)(5), removing the heading *''Credit bureau reports''* and adding, in its place, the heading *''Reports to consumer reporting agencies''*.

B. In paragraph (b)(5)(i), removing the words ''national credit bureaus'' at the end of the paragraph and adding, in their place, the words ''nationwide consumer reporting agencies''.

C. In paragraph (b)(5)(ii), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency'', and removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)''.

D. In paragraph (b)(5)(iv)(A), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

E. In paragraph (b)(5)(vi)(F), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

F. In paragraph (b)(5)(vi)(G), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

G. In paragraph (b)(5)(vi)(K), removing the word ''and'' at the end of the paragraph.

H. In paragraph (b)(5)(vi)(L), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

I. Adding a new paragraph (b)(5)(vi)(M).

J. Redesignating paragraph (b)(6)(ii) as paragraph (b)(6)(v).

K. Redesignating paragraph (b)(6)(iii) as paragraph (b)(6)(vi).

L. Redesignating paragraph (b)(6)(iv) as paragraph (b)(6)(vii).

M. Redesignating paragraph (b)(6)(v) as paragraph (b)(6)(ii).

N. Redesignating paragraph (b)(6)(vi) as paragraph (b)(6)(iii).

O. In newly redesignated paragraph (b)(6)(iii), removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)'', and removing the words ''national credit bureaus (if that is the case)'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

P. Adding a new paragraph (b)(6)(iv).

Q. In newly redesignated paragraph (b)(6)(vi), removing the reference ''(b)(6)(iv)'' and adding, in its place, the reference ''(b)(6)(vii)''.

The additions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vi) * * *

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

(vii) * * *

(6) * * *

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

* * * * *

23. Section 682.601 is amended by adding a new paragraph (a)(7)(iii) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(7) * * *

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

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of paragraph (c) of this section in making the need-based grants; and

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

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

25. Section 685.200 is amended by:

A. In paragraph (a)(1)(iv)(A)(*1*), removing the word ''and'' at the end of the paragraph.

B. In paragraph (a)(1)(iv)(A)(*2*), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

C. Adding a new paragraph (a)(1)(iv)(A)(*3*).

D. Removing paragraph (a)(1)(iv)(B).

E. Redesignating paragraph (a)(1)(iv)(C) as paragraph (a)(1)(iv)(B).

F. In newly redesignated paragraph (a)(1)(iv)(B), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

The addition reads as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

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

* * * * *

26. Section 685.202 is amended by:

A. Adding a new paragraph (a)(4).

B. In paragraph (b)(2), removing the words ''the Secretary capitalizes'' and adding, in their place, the words ''or for a Direct PLUS Loan, the Secretary may capitalize''.

The addition reads as follows:

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

(a) * * *

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

27. Section 685.204 is amended by:

A. In paragraph (b)(1)(iii)(A)(*2*), removing the word ''or'' at the end of the paragraph.

B. In paragraph (b)(1)(iii)(A)(*3*), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.

C. Adding a new paragraph (b)(1)(iii)(A)(*4*).

D. Revising paragraph (b)(1)(iii)(B).

E. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

F. In newly redesignated paragraph (i)(3), removing the words ''paragraph (h)(2)'' each time they appear and adding, in their place, the words ''paragraph (i)(2)''.

G. In newly redesignated paragraph (i)(4), removing the words ''paragraph (h)(2)'' and adding, in their place, the words ''paragraph (i)(2)''.

H. Adding a new paragraph (g).

The revisions and additions read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1)(i) * * *

(iii)(A) * * *

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

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*), (*3*), or (*4*) of this section, the borrower has the option to cancel the deferment and continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

* * * * *

(g) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on § 682.204(b)(1)(iii)(A)(*2*), (3), or (*4*), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

* * * * *

28. Section 685.205 is amended by:

A. In paragraph (b)(8), removing the word ''or'' at the end of the paragraph.

B. In paragraph (b)(9), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

C. Adding a new paragraph (b)(10) to read as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

29. Section 685.211 is amended by:

A. In paragraph (f)(1), removing the words ''credit bureau'' in the third sentence and adding, in their place, the words ''consumer reporting agency''.

B. Adding a new paragraph (f)(4).

The addition reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) * * *

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

30. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

(2) *Determination of eligibility.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(3) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(4) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(4)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(5) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).*

(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

31. Section 685.217 is amended by:

A. Revising paragraph (a).

B. In paragraph (b), adding a definition of *Educational service agency*.

C. Revising the introductory text of paragraph (c)(1).

D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school failed'' and adding, in their place, the word ''fails''.

G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.

J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

K. Adding a new paragraph (c)(3)(iii).

L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.

N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

O. Adding a new paragraph (c)(4)(iii).

P. Revising paragraph (c)(9).

Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been after the 1997–1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * *

(3) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(4) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) 34 CFR 682.216;

(ii) Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

* * * * *

§ 685.220 [Amended]

32. Section 685.220 is amended by:

A. In paragraph (d)(1)(i)(B)(*3*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.

B. In paragraph (d)(1)(i)(B)(*4*), adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

C. In paragraph (d)(1)(i)(B)(*5*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.

33. Section 685.221 is amended by:

A. Revising paragraph (a)(4).

B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(2) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

C. In paragraph (b)(2)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the''.

D. Redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

E. Adding a new paragraph (b)(2)(ii).

F. In newly redesignated paragraph (b)(2)(iii), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

G. In newly redesignated paragraph (b)(2)(iv), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

The revision and addition read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(b) * * *

(2) * * *

(ii) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the outstanding principal amount of eligible loans that are Direct Loans;

* * * * *

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