

## DEPARTMENT OF EDUCATION

## 34 CFR Part 685

[Docket ID ED-2013-OPE-0066]

RIN 1840-AD13

## William D. Ford Federal Direct Loan Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Secretary amends the William D. Ford Federal Direct Loan Program (Direct Loan Program) regulations to reflect changes made to the program by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. Specifically, these interim final regulations reflect the provisions in MAP-21 that amended the Higher Education Act of 1965, as amended (HEA) to extend the 3.4 percent interest rate on Direct Subsidized Loans from July 1, 2012, to July 1, 2013, and to ensure that a borrower may not receive Direct Subsidized Loans for more than 150 percent of the published length of the educational program in which the borrower is enrolled. Under the changes made by MAP-21, if the borrower exceeds this Direct Subsidized Loan limit, the borrower also becomes responsible for the accruing interest on the Direct Subsidized Loans.

**DATES:** These interim final regulations are effective May 16, 2013. We must receive your comments on or before July 1, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only once 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 [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [regulations.gov](http://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 interim final regulations, address them to Nathan Arnold, U.S. Department of Education, 1990 K Street NW., Room 8084, Washington, DC 20006-8542.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Nathan Arnold, U.S. Department of Education, 1990 K Street NW., Room 8084, Washington, DC 20006-8542. Telephone: (202) 219-7134 or via Internet at: [Nathan.Arnold@ed.gov](mailto:Nathan.Arnold@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

**Purpose of This Regulatory Action:** On July 6, 2012, the President signed into law MAP-21, which, among other things, made two changes to section 455 of the HEA. First, the law extended for an additional year the 3.4 percent interest rate that had applied to Direct Subsidized Loans made to undergraduate students since July 1, 2011. Second, the law placed a limit on Direct Subsidized Loan eligibility for new borrowers on or after July 1, 2013. Specifically, the statute provides that a new borrower on or after July 1, 2013, becomes ineligible to receive additional Direct Subsidized Loans if the period during which the borrower has received such loans exceeds 150 percent of the published length of the borrower's educational program. The borrower also becomes responsible for accruing interest during all periods as of the date the borrower exceeds the 150 percent limit. The purpose of the statutory changes is to encourage students to complete their academic programs in a timely manner. Timely completion of programs will allow borrowers to reap the benefits of a postsecondary degree or credential and avoid incurring unnecessary student loan debt. This interim final rule implements the required statutory changes.

**Summary of the Major Provisions of This Regulation:**

**Action:** This interim final rule incorporates the statutory changes made by MAP-21 by—

- Providing that a Direct Subsidized Loan first disbursed on or after July 1, 2012, and before July 1, 2013, has an interest rate of 3.4 percent.
- Establishing new Direct Loan Program regulations that provide that a new borrower on or after July 1, 2013, is no longer eligible to receive additional Direct Subsidized Loans if

the period during which the borrower has received such loans meets or exceeds 150 percent of the published length of the program in which the borrower is currently enrolled. These borrowers may still receive Direct Unsubsidized Loans for which they are otherwise eligible.

- Establishing new Direct Loan Program regulations that provide that new borrowers who are ineligible for Direct Subsidized Loans as a result of these provisions and enroll in a program for which the borrower would otherwise be eligible for a Direct Subsidized Loan become responsible for accruing interest on all previously received Direct Subsidized Loans during all future periods, beginning on the date of the triggering enrollment.

- Prorating periods of Direct Subsidized Loan receipt during part-time enrollment for purposes of the limit on Direct Subsidized Loan eligibility.

- Establishing special rules for applying the limit on Direct Subsidized Loan eligibility for borrowers enrolled in preparatory coursework required for enrollment in an undergraduate or a graduate or professional program and teacher certification coursework necessary for a State teaching credential for which the institution awards no academic credential. These special rules limit the borrower's responsibility for accruing interest in certain circumstances.

- Modifying existing entrance- and exit-counseling requirements to provide borrowers with information regarding the 150 percent limit on Direct Subsidized Loans.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in this interim final rule.

Chart 1 summarizes the interim final regulations and related benefits, costs, and transfers that are discussed in more detail in the *Regulatory Impact Analysis* of this preamble. The Department estimates that approximately 62,000 borrowers will be affected by these interim final regulations in the 2013 loan cohort, with the number of borrowers affected increasing in each cohort to approximately 578,000 borrowers in the 2023 loan cohort. The benefits of these interim final regulations include reduced loan balances and lower payments for borrowers receiving Direct Subsidized Loans between July 1, 2012, and July 1, 2013, and the creation of incentives for first-time borrowers on or after July 1, 2013, to complete academic programs in

a timely manner. The net budget impact of the interim final regulations is –\$3.9 billion over the 2013 to 2023 loan cohorts.

CHART 1—SUMMARY OF THE PROPOSED REGULATIONS

Issue and key features	Benefits	Cost/transfers
<p>Interest rate reduction, limitations on eligibility for Direct Subsidized Loans, and responsibility for accruing interest for first-time borrowers on or after July 1, 2013 (34 CFR part 685)</p> <p>Reduction of interest rate on Direct Subsidized Loans to 3.4 percent after July 1, 2011, and before July 1, 2013.</p> <p>Limitation on Direct Subsidized Loan eligibility for borrowers who receive such loans for 150 percent of the published length of the educational program and borrower responsibility for accruing interest for enrollment after meeting or exceeding this limit.</p> <p>Prorating periods of Direct Subsidized Loan receipt during part-time enrollment.</p> <p>Specialized treatment for borrowers enrolled in preparatory coursework required for enrollment in an eligible program and teacher certification coursework necessary for a State teaching credential for which the institution awards no academic credential.</p> <p>Modified entrance- and exit-counseling requirements to provide borrowers with information regarding the 150 percent limit on Direct Subsidized Loans.</p>	<p>Reduced loan balance and lower payments for borrowers.</p> <p>Create incentives for students to complete academic programs in a timely manner and avoid incurring unnecessary loan debt.</p> <p>Account for differing enrollment levels for borrower equity.</p> <p>Limit borrower responsibility for accruing interest to encourage completion.</p> <p>Provide borrowers with information on eligibility limitations and potential responsibility for accruing interest.</p>	<p>Estimated net budget impact of –\$3.9 billion over the 2013–2023 loan cohort.</p> <p>Estimated cost of \$4.21 million in increased burden to institutions and borrowers.</p>

### Invitation to Comment

We invite you to submit comments regarding these interim final regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each of your comments addresses and to arrange your comments in the same order as the interim final regulations. We will consider these comments in determining whether to revise these interim final regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Direct Loan Program.

During and after the comment period, you may inspect all public comments about these interim final regulations by accessing [www.regulations.gov](http://www.regulations.gov). You may also inspect the comments in person in room 8083, 1990 K Street, NW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week, except Federal holidays.

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

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

### Background

On July 6, 2012, the President signed MAP–21 into law. MAP–21 included two changes to the Direct Loan Program. First, MAP–21 amended section 455 of the HEA to extend the 3.4 percent fixed interest rate that applies to Direct Subsidized Loans made to undergraduate students before July 1, 2013. Second, the law placed a limit on Direct Subsidized Loan eligibility for new borrowers on or after July 1, 2013. Specifically, a new borrower on or after July 1, 2013 is no longer eligible to receive additional Direct Subsidized Loans if the period during which the borrower has received such loans exceeds 150 percent of the published length of the borrower's educational program. Additionally, the borrower becomes responsible for accruing interest on any Direct Subsidized Loan made to the borrower on or after July 1, 2013 if he or she is enrolled in an undergraduate program after reaching

this 150 percent limit. These restrictions apply to a “first-time borrower” on or after July 1, 2013; a first-time borrower is one who on that date has no outstanding balance of principal or interest on a Direct Loan Program or FFEL Program loan.

The amendments to section 455 of the HEA that limit eligibility for Direct Subsidized Loans require implementing regulations. Under MAP–21 these regulations are not subject to the requirements in sections 482 and 492 of the HEA for negotiated rulemaking and publication of regulations in accordance with the master calendar provisions. These interim final regulations contain the provisions necessary to implement the amendments to section 455 of the HEA.

The Department will be making significant changes to its student financial aid systems to implement the new statutory requirements. Those changes are described in more detail at the conclusion of this preamble. The Department will be responsible for the following: tracking borrowers' Direct Subsidized Loan borrowing in greater detail; informing institutions of the number of periods a borrower has received Direct Subsidized Loans; and informing borrowers when they exceed the eligibility limit and become responsible for accruing interest. Institutions will not be required to track this information or inform borrowers of their status on a continual basis. However, for the Department to ensure the integrity of the Direct Loan Program and compliance with the new statutory

and regulatory requirements, institutions will be required to report certain additional program and borrower enrollment information to the Department.

### Significant Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

#### *Part 685—William D. Ford Federal Direct Loan Program Extension of the 3.4 Percent Fixed Interest Rate on Direct Subsidized Loans until July 1, 2013 (§ 685.202(a)(1)(v)(E))*

*Statute:* MAP–21 amended section 455(b)(7)(D) of the HEA to extend, until July 1, 2013, the period during which the fixed interest rate on new Direct Subsidized Loans will be 3.4 percent. The interest rate on new loans was scheduled to increase to a fixed interest rate of 6.8 percent beginning with loans first disbursed on or after July 1, 2012. The increase in the interest rate to 6.8 percent is now scheduled to begin with loans first disbursed on or after July 1, 2013.

*Current Regulations:* Under current § 685.202(a)(1)(v)(E) of the regulations, the interest rate on a Direct Subsidized Loan first disbursed on or after July 1, 2011, and before June 30, 2012, is 3.4 percent. Under § 685.202(a)(1)(iv), the interest rate on Direct Subsidized Loans disbursed on or after July 1, 2012, is 6.8 percent. Direct Subsidized Loans are only available to undergraduate borrowers.

*New Regulations:* We are revising § 685.202(a)(1)(v)(E) of the Direct Loan regulations to reflect that the unpaid balance on a Direct Subsidized Loan first disbursed on or after July 1, 2011, and before July 1, 2013, has an interest rate of 3.4 percent.

*Reasons:* This change reflects the amendment to section 455(b)(7)(D) of the HEA.

#### *Application of the 150 Percent Direct Subsidized Loan Limit to First-Time Borrowers on or After July 1, 2013 (§ 685.200(f)(1)(i))*

*Statute:* MAP–21 added section 455(q)(1) to the HEA, which provides that any borrower who is a new borrower on or after July 1, 2013, is subject to the revised eligibility requirements that limit the borrower's receipt of Direct Subsidized Loans to 150 percent of the published length of the borrower's educational program.

*Current Regulations:* There are no existing regulations.

*New Regulations:* Section 685.200(f)(1)(i) defines the term “first-time borrower” as an individual who has no outstanding balance of principal or interest on a loan made under the Direct Loan Program or the FFEL Program (regardless of loan type) on July 1, 2013, or on the date the borrower obtains a Direct Loan after July 1, 2013.

The limitation on Direct Subsidized Loan eligibility only applies to a “first-time borrower” on or after July 1, 2013. A borrower who has an outstanding loan balance as of that date is not subject to the 150 percent Direct Subsidized Loan eligibility limit. If the borrower had such a loan balance prior to July 1, 2013, and paid off that balance in full, and then received a new Direct Loan on or after July 1, 2013, the borrower is considered a “first-time borrower” and subject to the Direct Subsidized Loan eligibility limit.

A borrower who has an outstanding balance on a Direct Loan or a FFEL program loan prior to July 1, 2013, and who consolidates those loans on or after July 1, 2013, does not become a “first-time borrower” for this purpose by consolidating the loans. Finally, we do not consider a borrower's outstanding balance on a Federal Perkins loan in the determination of whether a borrower is a first-time borrower who will be subject to the Direct Subsidized loan eligibility limit.

*Reasons:* We have defined the term “first-time borrower” to reflect the provision of MAP–21 that applies the 150 percent Direct Subsidized Loan eligibility limit to first-time borrowers on or after July 1, 2013. The definition of “first-time borrower” for this purpose is consistent with how we have treated similarly situated borrowers for other purposes elsewhere in the Direct Loan and FFEL program regulations (see, e.g., §§ 685.209(a)(1) and 685.217(a)(1)).

#### *Limitations on Eligibility for Direct Subsidized Loans (§ 685.200(a)(2), § 685.200(f)(2))*

*Statute:* MAP–21 added section 455(q)(1) to the HEA. Section 455(q)(1) of the HEA provides that any borrower who is a new Direct Loan borrower on or after July 1, 2013, is not eligible for a Direct Subsidized Loan if the period of time for which the borrower has received Direct Subsidized Loans, in the aggregate, exceeds 150 percent of the published length of the borrower's educational program. Such a borrower may still receive any Direct Unsubsidized Loan for which the borrower is otherwise eligible.

*Current Regulations:* There are no existing regulations.

*New Regulations:* Section 685.200(f)(2) provides that a first-time borrower loses eligibility for new Direct Subsidized Loans when the borrower has no remaining eligibility period, as defined in § 685.200(f)(1)(iv) (this and other defined terms are discussed in the next section of the preamble). The interim final regulations also provide that such a borrower may still receive a Direct Unsubsidized Loan for which the borrower is otherwise eligible. In addition, we have updated § 685.200(a)(2)(i) to reflect that, in addition to demonstrating financial need in accordance with Title IV, part F of the HEA, a first-time borrower must also not have met or exceeded the limitations on receipt of Direct Subsidized Loans described in § 685.200(f).

*Reasons:* Section 685.200(f)(2) reflects section 455(q)(1) of the HEA, which places a limit on eligibility for Direct Subsidized Loans if a first-time borrower on or after July 1, 2013, receives Direct Subsidized Loans in excess of 150 percent of the published length of the borrower's educational program. We are including a cross reference to § 685.200(f) in § 685.200(a)(2)(i) to ensure that first-time borrowers understand that eligibility for Direct Subsidized Loans depends on meeting the eligibility requirements in § 685.200(f).

#### *Calculation of a Borrower's Maximum Eligibility Period, Subsidized Usage Period, and Remaining Eligibility Period (§ 685.200(f)(1)(ii)–(f)(1)(iv))*

*Statute:* Under section 455(q) of the HEA a borrower is no longer eligible for additional Direct Subsidized Loans if the period of time for which the borrower has received Direct Subsidized Loans exceeds the aggregate period of enrollment described in section 455(q)(3). Section 455(q)(3) defines the term “aggregate period of enrollment” as the lesser of: (1) a period equal to 150 percent of the published length of the educational program in which the student is enrolled; or (2) in the case of a borrower who was previously enrolled in one or more other educational programs that began on or after July 1, 2013, a period of time equal to the difference between 150 percent of the published length of the longest educational program in which the borrower was, or is, enrolled and any periods of enrollment in which the borrower received a Direct Subsidized Loan.

*Current Regulations:* There are no existing regulations.

*New Regulations:* Section 685.200(f)(1)(ii) defines the term

“maximum eligibility period” and describes how we will calculate it for a borrower. The “maximum eligibility period” is the regulatory term we have adopted to refer to the “aggregate period of enrollment” described in section 455(q)(1) and (q)(3)(A) of the HEA. Section 685.200(f)(1)(ii) provides that a borrower’s maximum eligibility period for Direct Subsidized Loans is equal to 150 percent of the length of the educational program, as published by the institution, in which the borrower is currently enrolled. Therefore, we will calculate a borrower’s “maximum eligibility period” by multiplying the published length of the borrower’s current educational program by 1.5.

Section 685.200(f)(1)(iii) defines the term “subsidized usage period” and provides that we will calculate it by dividing the number of days in the borrower’s loan period for a Direct Subsidized Loan by the number of days in the academic year for which the borrower receives the Direct Subsidized Loan. The interim final regulations provide that this time period will be measured in academic years, which we will calculate using the information provided by the institution (this reporting requirement is discussed in more detail in the section of this preamble covering operational issues). A borrower’s “subsidized usage period” includes only those periods of time for which the borrower received a Direct Subsidized Loan, rather than all of the

periods that a borrower is enrolled in one or more educational programs.

Section 685.200(f)(1)(iii) also specifies that the number of years in a borrower’s subsidized usage period will be rounded down to the nearest quarter of a year. For example, a subsidized usage period of 0.53 years would be rounded to 0.5 years and a subsidized usage period of 0.88 years would be rounded to 0.75 years.

Section 685.200(f)(1)(iv) of the interim final regulations defines the term “remaining eligibility period” and provides that it is calculated as the difference, measured in academic years, between the borrower’s maximum eligibility period and the sum of the borrower’s subsidized usage periods. When the difference between a borrower’s maximum eligibility period and the sum of the borrower’s subsidized usage periods is zero, the borrower has no remaining eligibility period. As provided in § 685.200(f)(2), a first-time borrower who has no remaining eligibility period is no longer eligible for additional Direct Subsidized Loans. A borrower’s ability to regain eligibility for Direct Subsidized Loans is discussed later in this preamble.

A borrower’s maximum eligibility period and remaining eligibility period are calculated in the same manner regardless of whether the borrower graduates, transfers, or withdraws from the program. However, the interim final regulations treat a borrower who

graduates from his or her program in a timely manner differently for purposes of borrower responsibility for the accruing interest (see the preamble discussion of § 685.200(f)(3)).

Section 685.200(f)(1)(ii) provides that we will calculate a borrower’s maximum eligibility period based on the published length of the educational program in which the borrower is currently enrolled. Therefore, if a borrower subsequently enrolls in a program that is shorter or longer than the borrower’s current program, we will recalculate the borrower’s maximum eligibility period based on the length of the new program. Because § 685.200(f)(1)(iv) provides that a borrower’s remaining eligibility period is based (in part) on the sum of the borrower’s subsidized usage periods, subsidized usage periods accrued during previously-enrolled programs count against the maximum eligibility period of the program in which the borrower is currently enrolled.

Examples 1 through 5 illustrate how we will calculate a borrower’s maximum eligibility period, subsidized usage period, and remaining eligibility period:

*Example 1:* A borrower enrolls in a two-year undergraduate program and receives Direct Subsidized Loans for one academic year. The program’s academic year is comprised of 30 weeks (or 210 days) of instructional time.

	Years
<b>Maximum eligibility period</b>	3 academic years
<b>Subsidized usage period</b>	$\frac{210 \text{ days in the loan period}}{210 \text{ days in the academic year}} = 1 \text{ academic year}$
<b>Remaining eligibility period</b>	2 academic years

The borrower’s maximum eligibility period is 150 percent of the two-year program, or three academic years. Because the borrower has already received a Direct Subsidized Loan for one academic year, the borrower’s subsidized usage period is one academic year. The difference between the borrower’s maximum eligibility period

(three academic years) and the sum of the borrower’s subsidized usage periods (one academic year) is the borrower’s remaining eligibility period (two academic years). (For purposes of simplicity and clarity, subsequent examples will not include the conversion from days to years for a borrower’s subsidized usage period for

each loan and will refer to an “academic year” as a “year” unless necessary to illustrate the operation of a specific regulatory provision.)

*Example 2:* A borrower enrolls in a four-year program and receives Direct Subsidized Loans for each of the four years.

	Year 1	Year 2	Year 3	Year 4
Maximum eligibility period for program .....	6 years .....	6 years .....	6 years .....	6 years.
Subsidized usage period .....	1 year .....	1 year .....	1 year .....	1 year.
Sum of all subsidized usage periods .....	1 year .....	2 years .....	3 years .....	4 years.

	Year 1	Year 2	Year 3	Year 4
Remaining eligibility period at end of year .....	5 years .....	4 years .....	3 years .....	2 years.

The borrower's program has a published length of four years and a maximum eligibility period of six years (150 percent of the four-year program) and the borrower received Direct Subsidized Loans for four years. The subsidized usage period for each year is one year and the sum of the subsidized

usage periods is four years. At the end of the fourth year, the borrower's remaining eligibility period is two years, which is the difference between the borrower's maximum eligibility period (six years) and the sum of the borrower's subsidized usage periods (four years).

*Example 3:* A borrower enrolls in a two-year program and receives Direct Subsidized Loans for two years. The borrower then transfers to a four-year program, but has not yet received any Direct Subsidized Loans for attendance in the four-year program.

	After year 2 of two-year program	Upon transfer to four-year program
Maximum eligibility period for program .....	3 years .....	6 years.
Sum of all subsidized usage periods .....	2 years .....	2 years.
Remaining eligibility period .....	1 year .....	4 years.

The borrower's original two-year program had a maximum eligibility period of three years. Because the borrower received Direct Subsidized Loans for each of the two years of enrollment, the sum of the borrower's subsidized usage periods is two years. When the borrower enrolls in the four-year program, the borrower's maximum eligibility period is recalculated to six years (150 percent of the four-year program). The borrower's prior subsidized usage periods in the two-year program count against the borrower's new maximum eligibility period. Therefore, the borrower's remaining eligibility period is four years, which is the difference between the borrower's new maximum eligibility period (six years) and the sum of the borrower's subsidized usage periods (two years). (Subsequent examples will only detail the sum of all of a borrower's subsidized usage periods unless necessary to clarify the application of the interim final regulations.)

*Example 4:* A borrower enrolls in a four-year program and receives Direct Subsidized Loans for two years. The borrower then withdraws before completing the four-year program, and subsequently enrolls in a two-year program. The borrower has not yet received any Direct Subsidized Loans for attendance in the two-year program.

Maximum eligibility period for two-year program.	3 years.
Sum of all subsidized usage periods.	2 years.
Remaining eligibility period .....	1 year.

The borrower's four-year program has a maximum eligibility period of six years. When the borrower enrolls in the two-year program, the borrower's

maximum eligibility period is recalculated as three years (150 percent of the two-year program). The borrower's prior subsidized usage periods (two years) in the four-year program count against the borrower's new maximum eligibility period in the two-year program. Therefore, the borrower's remaining eligibility period is one year, which is the difference between the borrower's maximum eligibility period (three years) and the sum of the borrower's subsidized usage periods (two years).

*Example 5:* A borrower enrolls in a four-year program and receives Direct Subsidized Loans for three years. The borrower completes the degree program at the end of the fourth year, but does not receive any Direct Subsidized Loans for that year. The borrower then enrolls in a different four-year undergraduate program, but has not yet received any Direct Subsidized Loans in the new program.

Maximum eligibility period .....	6 years.
Sum of the subsidized usage periods.	3 years.
Remaining eligibility period .....	3 years.

The borrower's original four-year program has a maximum eligibility period of six years. The borrower received Direct Subsidized Loans for three years. The borrower's maximum eligibility period in the second four-year program is also six years, and the borrower's prior subsidized usage periods count against the borrower's maximum eligibility period in the second program. Therefore, the borrower's remaining eligibility period is three years, which is the difference between the borrower's maximum eligibility period (six years) and the sum

of the borrower's subsidized usage periods (three years). The borrower's fourth year of enrollment in the original program has no effect on the borrower's remaining eligibility period because the borrower did not receive any Direct Subsidized Loans for that year.

In addition to the standard calculations described above, we note that § 685.301(a)(10) and (c) continue to apply and effectively limit the length of time a borrower may receive loans under the interim final regulations.

Specifically, § 685.301(a)(10) describes the minimum permissible length of a loan period. If the borrower's remaining eligibility period (as calculated under § 685.200(f)(1)(iv)) is less than the minimum permissible loan period associated with the borrower's program of study, then the institution may not disburse a Direct Subsidized Loan to that borrower.

Under § 685.301(c), borrowers enrolled in clock-hour, non-term, or certain non-standard term programs are not eligible for a new annual loan limit until they complete either the weeks of instructional time or clock hours required. Thus, students enrolled in these types of programs are effectively limited to receiving Direct Subsidized Loans for 100 percent of the length of the program, notwithstanding the 150 percent maximum eligibility period of the program as calculated under section 455(q) of the HEA. As a result, the 150 percent limit does not affect a borrower enrolled in such a program unless the borrower subsequently enrolls in another educational program (whether a standard-term, non-standard-term, or non-term program).

The requirements of § 685.301(a)(10) are summarized in Table 1, below. Examples 6 and 7 illustrate the effect on

the 150 percent limitations of § 685.301(a)(10) and (c), respectively.

TABLE 1—MINIMUM LOAN PERIODS FOR DIFFERING PROGRAM TYPES

Type of program	Minimum loan period
Credit hour, standard term program .....	One term.
Credit hour, non-standard term program with terms substantially equal and at least nine weeks of instructional time.	One term.
Credit hour, non-standard term program without terms substantially equal or at least nine weeks of instructional time.	Lesser of the length of the program or the program's academic year.
Credit hour, non-term program .....	Lesser of the length of the program or the program's academic year.
Clock hour program .....	Lesser of the length of the program or the program's academic year.

*Example 6:* The borrower is enrolled in a 22-week (or 154-day), 800-clock-hour certificate program that defines its academic year as 26 weeks (or 182 days) of instructional time. The borrower receives a Direct Subsidized Loan that covers the length of the program. Upon

completing the certificate program, the borrower enrolls in a two-year associate's degree program that defines its academic year as 30 weeks (or 210 days) of instructional time, and that uses credit hours and semesters. In each of the borrower's first two years in the

associate's degree program, the borrower receives a Direct Subsidized Loan for the academic year. The borrower has not yet completed the associate's degree program, and is requesting loans for the third year.

	After Certificate program	After year 1 in the two-year program	After year 2 in the two-year program
Maximum eligibility period of program ....	1.27 years .....	3 years .....	3 years.
Subsidized usage period .....	0.85 years, rounded down to 0.75 years	1 year .....	1 year.
Sum of all subsidized usage periods .....	0.75 years .....	1.75 years .....	2.75 years.
Remaining eligibility period at end of the year.	0.52 years .....	1.25 years .....	0.25 years.

The borrower's 22-week certificate program, which is the equivalent of 0.85 academic years

$$\left( \frac{154 \text{ days in program}}{182 \text{ days in academic year}} \right),$$

has a maximum eligibility period of 1.27 academic years (0.85 academic years multiplied by 150 percent). The borrower's subsidized usage period for the certificate program is the same as the length of the program, 0.85 academic years

$$\left( \frac{154 \text{ days in loan period}}{182 \text{ days in academic year}} \right),$$

which is rounded down to the nearest quarter-year, or 0.75 years. Upon transferring to the two-year program, the borrower's maximum eligibility period

is three years. After two years in the two-year program, during which the borrower receives Direct Subsidized Loans equaling two years, the sum of the borrower's subsidized usage periods is 2.75 years (two years from the two-year program plus 0.75 years from the certificate program). After two years in the two-year program, the borrower's remaining eligibility period is 0.25 years (the difference between the two-year program's maximum eligibility period (three years) and the sum of the borrower's subsidized usage periods (2.75 years)). The borrower has a remaining eligibility period of 52.5 days (0.25 years × 210 days in an academic year). Because the borrower is enrolled in a program that uses credit hours and semesters, under § 685.301(a)(10), the

minimum loan period for this borrower is one term. Because the borrower's remaining eligibility period of 52.5 days is less than the length of a semester (generally 98–112 days, or 14–16 weeks), the institution cannot disburse a Direct Subsidized Loan to this borrower, even though the borrower's remaining eligibility period is greater than zero.

*Example 7:* The borrower is enrolled in a one-year, 900 clock hour certificate program that defines its academic year as 26 weeks (or 182 days) of instructional time. The institution disburses a Direct Subsidized Loan to the borrower for the academic year. The borrower completes only 700 clock hours of instructional time during the academic year.

Maximum eligibility period .....	1.5 years.
Subsidized usage period .....	1 year.
Remaining eligibility period .....	0.5 years, subject to the limitation below.

The borrower's one-year program has a maximum eligibility period of 1.5 years and the borrower's subsidized usage period is one year. The borrower's remaining eligibility period is 0.5 years (the difference between the borrower's maximum eligibility period (1.5 years) and the sum of the borrower's

subsidized usage periods (one year)). Because the program is a clock hour program, and because the borrower has only completed 700 clock hours of instructional time, the borrower may not progress to the next academic year. Because § 685.301(c) applies, this borrower is not eligible to receive an

additional Direct Subsidized Loan in this program, notwithstanding the borrower's remaining eligibility period of 0.5 years.

Example 7 illustrates that borrowers in clock-hour, non-term, and certain non-standard term programs are effectively limited to receiving Direct Subsidized Loans for 100 percent of the

length of the program. Borrowers in such programs are not able to receive Direct Subsidized Loans for their remaining eligibility period unless they subsequently enroll in another program, as illustrated in example 6.

*Reasons:* MAP–21 added section 455(q)(3)(A) to the HEA, which provides the method by which a borrower’s eligibility for Direct Subsidized Loans is determined. To implement this provision, it is necessary to issue regulations that describe the statutory calculations with greater specificity.

Section 685.200(f)(1)(ii) implements section 455(q)(3) of the HEA and establishes the rule for determining a borrower’s maximum eligibility period for Direct Subsidized Loans. To avoid potentially misleading borrowers, we elected to use the term “maximum eligibility period” rather than the statutory term “aggregate period of enrollment.” Because the 150 percent limit on eligibility is measured by the period for which a borrower receives Direct Subsidized Loans, rather than the period of time that a borrower is enrolled, using the statutory term could cause borrower confusion.

Section 685.200(f)(1)(ii) bases the calculation of a borrower’s maximum eligibility period on the published length of the program in which the borrower is currently enrolled because failing to do so would result in inequitable treatment of similarly situated borrowers. For example, if enrolling in a new, shorter educational program did not result in recalculating a borrower’s maximum eligibility period, transfer and non-transfer students would have significantly divergent remaining eligibility periods simply by virtue of enrollment in a different program. Suppose a borrower is enrolled in a four-year program, receives a Direct Subsidized Loan for one year, and then transfers to a two-year program. If we did not recalculate the borrower’s maximum eligibility period, that borrower would be eligible for five additional years of Direct Subsidized Loans. In contrast, a borrower who had been enrolled in the two-year program from the beginning and also received a Direct Subsidized Loan for one year would only have two years of eligibility remaining. Without recalculating a borrower’s maximum eligibility period when the borrower enrolls in a different program, otherwise-equivalent borrowers would have inconsistent and inequitable eligibility periods. To treat all borrowers who receive Direct Subsidized Loans equitably, regardless of whether they have previously enrolled in programs of differing durations for which they

received Direct Subsidized Loans, we are determining eligibility for Direct Subsidized Loans in this manner.

Section 685.200(f)(1)(iii) of the interim final regulations, which defines the term “subsidized usage period,” is necessary to implement the requirement in section 455(q)(1) of the HEA that the borrower not receive Direct Subsidized Loans for a period in excess of the borrower’s maximum eligibility period. This provision provides a method to calculate the period for which a borrower has received Direct Subsidized Loans to ensure the statutory maximum is not exceeded. We chose to round borrowers’ subsidized usage periods down to the nearest quarter year to make it easier for borrowers and institutions to understand and communicate a borrower’s eligibility for Direct Subsidized Loans. In addition, we chose to round down to ensure that borrowers were not denied eligibility for Direct Subsidized Loans solely on the basis of rounding.

Because section 455(q)(3)(A) of the HEA does not explicitly provide a method for calculating a borrower’s remaining eligibility period, we needed to issue regulations to establish rules for calculation of that period. Section 685.200(f)(1)(iv) provides that a borrower’s “remaining eligibility period” is defined as the difference, measured in academic years, between the borrower’s maximum eligibility period and the sum of the borrower’s subsidized usage periods with certain exceptions as discussed in the next paragraph. The remaining eligibility period will inform borrowers of the period they have remaining before becoming ineligible for Direct Subsidized Loans.

Finally, as explained above, § 685.200(f)(1)(iv) is subject to the existing provisions of § 685.301(a)(10) and (c), which govern the minimum length of loan periods for students enrolled in clock hour, non-term, or certain non-standard term programs. Because MAP–21 did not include any changes to the statutory provisions reflected in § 685.301(a)(10) and (c), the calculations specified under § 685.200(f)(1) must be consistent with those existing regulatory requirements.

*Exceptions to the Calculation of the 150 Percent Limit for Students Enrolled on Less Than a Full-Time Basis or Who Receive the Full Annual Loan Limit for a Loan Period of Less Than an Academic Year (§ 685.200(f)(4))*

*Statute:* MAP–21 added section 455(q)(3)(B) to the HEA, which directs the Department to specify in regulations how the aggregate period of enrollment

will be calculated with respect to borrowers who are enrolled on less than a full-time basis. While section 428(b)(1)(A) of the HEA permits borrowers to receive an amount equal to the full annual loan limit for periods of less than an academic year, revised section 455(q) of the HEA does not provide a specific rule for applying the 150 percent limit to these borrowers.

*Current Regulations:* There are no existing regulations.

*New Regulations:* The interim final regulations provide two exceptions to the rules for the calculation of a borrower’s subsidized usage period in § 685.200(f)(1)(iii).

The first exception applies to borrowers who receive the full Direct Subsidized Loan annual loan limit for a period of enrollment that is less than an academic year. Section 685.200(f)(4)(i) provides that, in this circumstance, a borrower’s subsidized usage period is one year notwithstanding the subsidized usage period calculated under § 685.200(f)(1)(iii).

The second exception applies to borrowers who are enrolled in an educational program on less than a full-time basis. Section 685.200(f)(4)(ii) of the interim final regulations provides that, except as provided in § 685.200(f)(4)(i) (the exception described in the preceding paragraph), the Secretary will prorate the subsidized usage period for borrowers enrolled on a half-time or three-quarter-time basis. This proration is done by multiplying the borrower’s subsidized usage period by 0.5 (for half-time) or 0.75 (for three-quarter-time), respectively.

Examples 8 through 11 illustrate the calculation of a borrower’s maximum eligibility period, subsidized usage period, and remaining eligibility period if the borrower receives a Direct Subsidized Loan in the amount of the full annual loan limit for a period less than an academic year, for less than full-time enrollment, or both.

*Example 8:* A first-year borrower is enrolled in a four-year, semester-based program and has received a Direct Subsidized Loan in the amount of \$3,500 (the full annual loan limit) that covers the fall semester. The borrower does not enroll in the spring semester.

Maximum eligibility period .....	6 years.
Subsidized usage period .....	1 year.
Remaining eligibility period .....	5 years.

The borrower’s four-year program has a maximum eligibility period of six years. The borrower received a Direct Subsidized Loan in the amount of the full annual loan limit for one term. Under § 685.200(f)(1)(iii), the borrower’s

subsidized usage period would be 0.5 years

**105 days in the loan period**  
**210 days in the academic year**

However, because the borrower received a Direct Subsidized Loan in the amount of a full annual loan limit for a period of less than a full academic year, § 685.200(f)(4)(i) applies, and the borrower's subsidized usage period is one year, notwithstanding the subsidized usage period calculated under § 685.200(f)(1)(iii). Therefore, the borrower's remaining eligibility period is five years, which is the difference between the borrower's maximum eligibility period (six years) and the sum

of the borrower's subsidized usage periods (one year).

*Example 9:* A borrower enrolls on a half-time basis for two years of a four-year program and receives Direct Subsidized Loans for each of the two academic years.

Maximum eligibility period .....	6 years.
Sum of the subsidized usage periods.	2 years.
Applicable Proration .....	0.5.
Prorated subsidized usage period	1 year.
Remaining eligibility period .....	5 years.

The borrower's four-year program has a maximum eligibility period of six years. Because the borrower was enrolled on a half-time basis, each of the borrower's subsidized usage periods is

prorated by multiplying the subsidized usage period by 0.5, resulting in two separate 0.5-year subsidized usage periods, for a total subsidized usage period of one year. Therefore, the borrower's remaining eligibility period is five years, the difference between the borrower's maximum eligibility period (six years) and the sum of the borrower's prorated subsidized usage periods (one year).

*Example 10:* A borrower enrolls in a four-year program and receives Direct Subsidized Loans for all four academic years. The borrower is enrolled full time during the first academic year, half time during the second and third academic years, and three-quarter time during the fourth year.

	Year 1	Year 2	Year 3	Year 4
Maximum eligibility period for program.	6 years .....	6 years .....	6 years .....	6 years
Subsidized usage period .....	1 year .....	1 year .....	1 year .....	1 year
Applicable Proration .....	N/A .....	0.5 .....	0.5 .....	0.75
Prorated subsidized usage period (if applicable).	1 year (not prorated) .....	0.5 years .....	0.5 years .....	0.75 years
Remaining eligibility period at end of year.	5 years .....	4.5 years .....	4 years .....	3.25 years

The borrower's maximum eligibility period for the four-year program is six years. Because the borrower had varying enrollment levels during the four years, prorated subsidized usage periods must be determined and then added together to determine the borrower's remaining eligibility period. As the table above shows, in the first year, the borrower's subsidized usage period is not prorated because the borrower is enrolled full time. In the second and third years, however, the borrower's subsidized usage period is prorated by 0.5 because the borrower is enrolled half time. In the fourth year, the borrower's subsidized

usage period is prorated by 0.75 because the borrower is enrolled three-quarter time. If the borrower had been enrolled full time during all four academic years, and received Direct Subsidized Loans for each of those years, the sum of the borrower's subsidized usage periods would be four years at the end of the four academic years. However, because the borrower was not enrolled on a full-time basis during all four academic years, and has subsidized usage periods that are prorated, the sum of the borrower's subsidized usage periods is 2.75 years. As a result, the borrower's remaining eligibility period is 3.25

years, which is the difference between the borrower's maximum eligibility period (six years) and the sum of the borrower's subsidized usage periods (2.75 years).

*Example 11:* Two first-year borrowers are enrolled in a two-year, semester-based program. Both borrowers are enrolled on a half-time basis. Borrower 1 receives a Direct Subsidized Loan for the fall term in the amount of \$3,500, which is the full annual loan limit. Borrower 2 receives a Direct Subsidized Loan for the fall term in the amount of \$3,000. Neither borrower enrolls in the spring semester.

	Borrower 1	Borrower 2
Maximum eligibility period .....	3 years .....	3 years.
Subsidized usage period .....	1 year .....	0.5 years.
Applicable proration .....	N/A .....	0.5.
Prorated usage period .....	N/A .....	0.25 years.
Remaining eligibility period .....	2 years .....	2.75 years.

The two-year program in which the borrowers are enrolled has a maximum eligibility period of three years. Borrower 1 received a Direct Subsidized Loan in the amount of the full annual loan limit for one term. Borrower 2 received a Direct Subsidized Loan for one term, but for less than the amount of the full annual loan limit. Both borrowers were enrolled on a half-time basis.

For Borrower 1, the calculated subsidized usage period under § 685.200(f)(1)(iii) would be 0.5 years

**105 days in the loan period**  
**210 days in the academic year**

However, because Borrower 1 received a subsidized loan in the amount of the full annual loan limit for a period of less than a full academic year, § 685.200(f)(4)(i) applies. Therefore, the

borrower's subsidized usage period is one year and is not prorated.

For Borrower 2, the calculated subsidized usage period is 0.5 years

**105 days in the loan period**  
**210 days in the academic year**

Because the borrower's loan amount is for less than the full annual loan limit, § 685.200(f)(4)(i) does not apply. Therefore, in accordance with



§ 685.200(f)(4)(ii), Borrower 2's subsidized usage period is prorated based on the borrower's half-time enrollment status. Because Borrower 2 is enrolled on a half-time basis, the borrower's subsidized usage period of 0.5 years is multiplied by 0.5, resulting in a prorated subsidized usage period of 0.25 years.

For Borrower 1, the remaining eligibility period is two years, which is the difference between the borrower's maximum eligibility period (three years) and the sum of the borrower's subsidized usage periods (one year). For Borrower 2, the remaining eligibility period is 2.75 years, which is the difference between the borrower's maximum eligibility period (three years) and the sum of the borrower's subsidized usage periods (0.25 years).

*Reasons:* Section 685.200(f)(4)(i) provides the first exception to the definition of the term "subsidized usage period": If a first-time borrower receives a Direct Subsidized Loan in an amount that is equal to the annual loan limit for a loan period that is less than a full academic year in length, the subsidized usage period is one year.

Under current law and regulations, a borrower can receive a Direct Subsidized Loan in an amount equal to the full annual loan limit for a period that is as short as a term (e.g., a semester). Absent § 685.200(f)(4)(i), a borrower would be able to partially circumvent the limitations on Direct Subsidized Loan eligibility enacted by MAP-21: An institution could double a borrower's Direct Subsidized Loan eligibility by disbursing the full annual Direct Subsidized Loan limit for a single term of the academic year (e.g., one semester). If this pattern were extended for the duration of the program, the borrower's subsidized usage period would be only 0.5 years for each academic year and the borrower would have effectively doubled his or her eligibility for Direct Subsidized Loans. Section 685.200(f)(4)(i) prevents this type of circumvention of MAP-21's limitations on Direct Subsidized Loan eligibility.

Section 685.200(f)(4)(ii) provides the second exception to the definition of the term "subsidized usage period": If a first-time borrower is enrolled on a half-time or three-quarter-time basis, the borrower's subsidized usage period is prorated by multiplying the borrower's subsidized usage period, as determined in accordance with § 685.200(f)(1)(iii), by 0.5 or 0.75, respectively. Section 685.200(f)(4)(ii) implements revised section 455(q)(3)(B)(i) of the HEA, which directs the Secretary to specify in regulation how a borrower's subsidized

usage period will be calculated when the borrower is enrolled on less than a full-time basis. Unlike other Federal student aid programs, such as the Federal Pell Grant Program, Direct Loans are not prorated based on the borrower's enrollment status. Thus, if a borrower who is enrolled on a part-time basis has the same costs and financial need as a borrower who is enrolled on a full-time basis, then both borrowers will be eligible for a Direct Subsidized Loan in the same amount (assuming the borrowers' years in school are equivalent). Because borrowers may decide to enroll on less than a full-time basis for many different reasons, we believe it is unlikely that failing to prorate such borrowers' subsidized usage periods would provide a sufficient incentive for such borrowers to enroll on a full-time basis. Furthermore, we believe that not prorating a borrower's subsidized usage period based on the borrower's enrollment status would unfairly punish borrowers who choose to enroll on a part-time basis, by further limiting such borrower's eligibility for Direct Subsidized Loans. Finally, prorating a borrower's subsidized usage period will not result in these borrowers receiving significantly higher levels of Direct Subsidized Loan funds than borrowers who are enrolled full time, because many borrowers who take out Direct Subsidized Loans in significant amounts will reach the aggregate Direct Subsidized Loan limit of \$23,000 prior to reaching their maximum eligibility period under these provisions.

*Borrower Responsibility for Accruing Interest on Existing Direct Subsidized Loans for Borrowers Who Continue Enrollment After Reaching the 150 Percent Subsidized Loan Limit (§ 685.200(f)(3))*

*Statute:* Section 455(q)(2) of the HEA, added by MAP-21, provides that interest accrues on all Direct Subsidized Loans disbursed to certain borrowers on or after July 1, 2013. A borrower is responsible for the accruing interest on these loans if the borrower is ineligible for additional Direct Subsidized Loans because of the 150 percent limitation and is enrolled in a program that would otherwise qualify the borrower for a Direct Subsidized Loan. Section 455(q)(2) further provides that interest on a Direct Subsidized Loan is paid and capitalized in the same manner as interest on a Direct Unsubsidized Loan.

*Current Regulations:* There are no existing regulations.

*New Regulations:* Section 685.200(f)(3)(i) describes the circumstances under which a first-time

borrower becomes responsible for accruing interest on his or her existing Direct Subsidized Loans. Notwithstanding any other provision in the regulations that limits the borrower's responsibility for accruing interest, the borrower exceeds the eligibility limit and becomes responsible for accruing interest on all Direct Subsidized Loans if the borrower: (1) has no remaining eligibility period; and (2) attends any undergraduate program or preparatory coursework on at least a half-time basis at an eligible institution that participates in the Title IV, HEA programs. (**Note:** throughout this preamble the terms enrollment and attendance are used interchangeably to describe a borrower taking courses at a program.)

Attendance in an eligible undergraduate program causes a borrower to become responsible for accruing interest even if the borrower does not request or receive a new loan. A borrower's enrollment in graduate or professional programs, enrollment on less than a half-time basis, or enrollment in programs at an institution that does not participate in the Title IV loan programs will not result in borrower responsibility for accruing interest because borrowers in those programs are not eligible for Direct Subsidized Loans. In addition, if a borrower has a Direct Consolidation Loan that repaid a Direct Subsidized Loan, and then the borrower subsequently becomes responsible for accruing interest, interest that accrues on that portion of the Direct Consolidation Loan is the responsibility of the borrower.

There are three circumstances in which a borrower becomes responsible for accruing interest on all Direct Subsidized Loans. The first is when a borrower who has no remaining eligibility period for Direct Subsidized Loans continues enrollment in the program for which the borrower received the loans. The second is when a borrower has no remaining eligibility period for a program and, after withdrawing or transferring, enrolls in a different program that is equal to or shorter in duration than the prior program. The third is when a borrower who previously received Direct Subsidized Loans and who still has some remaining eligibility period for that program withdraws or transfers from that program to a program of a shorter duration than the prior program. In some cases, enrolling in another program results in the sum of the borrower's subsidized usage periods equaling or exceeding the new program's maximum eligibility period. In such cases, the borrower's enrollment

in the shorter program causes the borrower to have no remaining eligibility period (which causes a loss of eligibility for additional Direct Subsidized Loans) and to become responsible for accruing interest on the outstanding loans.

Under § 685.200(f)(3)(i), a borrower becomes responsible for accruing interest on his or her outstanding loans from the date that the conditions of § 685.200(f)(3)(i)(A) and (B) are both met. The borrower is responsible for accruing interest when the borrower is enrolled at least half time at an eligible institution, during the grace period, during deferment periods, or during certain periods when the borrower is repaying Direct Loans under the Pay As You Earn or Income-Based Repayment plans (existing regulations governing those repayment plans provide that under certain circumstances borrowers are not responsible for accruing interest).

Section 685.200(f)(3)(ii) provides that, if a borrower previously became

responsible for accruing interest on a Direct Subsidized Loan and then receives a Direct Consolidation Loan that repays that loan, the borrower continues to be responsible for the accruing interest on the portion of that Direct Consolidation Loan that repaid the Direct Subsidized Loan.

Section 685.200(f)(3)(iii) provides that, for any outstanding Direct Subsidized Loans for which the borrower becomes responsible for accruing interest, interest that accrued prior to the date on which the borrower became responsible for accruing interest does not become the borrower's responsibility; rather, the borrower is responsible only for the interest that accrues after the borrower meets both conditions specified in § 685.200(f)(3)(i)(A) and (B) (we use the term "accruing interest" in this preamble to indicate this distinction). Borrowers have the option of paying the interest portion or allowing interest to be capitalized. Unpaid interest is

capitalized in the same manner as it is on a Direct Unsubsidized Loan.

Section 685.200(f)(3)(iv) specifies the effect on a borrower's responsibility for accruing interest caused by attendance in a subsequent program if the borrower completes his or her current program in a timely manner. If a borrower completes an undergraduate program without becoming responsible for accruing interest, attendance in a subsequent program will not cause borrower responsibility for accruing interest on previously received loans, even if the borrower has no remaining eligibility period.

Examples 12 through 16 illustrate how a borrower becomes responsible for accruing interest under § 685.200(f)(3):

*Example 12:* A borrower enrolls in a four-year program, but takes six years to complete the program and receives Direct Subsidized Loans for each of those six years. The borrower then continues to be enrolled in the same program for a seventh year.

Maximum eligibility period .....	6 years.
Subsidized usage period .....	6 years.
Remaining eligibility period .....	0 years.
Borrower responsibility for accruing interest .....	The borrower becomes responsible for accruing interest upon enrollment in the seventh year.

The maximum eligibility period for the four-year program is six years. The borrower received Direct Subsidized Loans for all six years, meaning that the borrower is no longer eligible for additional Direct Subsidized Loans. Because the borrower continues enrollment in the same program after losing eligibility for additional Direct Subsidized Loans, the borrower

becomes responsible for accruing interest on all of his or her outstanding Direct Subsidized Loans, regardless of whether he or she requests or receives additional Federal student aid. If the borrower had graduated or discontinued enrollment before the seventh year, the borrower would not have become responsible for accruing interest on his or her Direct Subsidized Loans.

*Example 13:* A borrower enrolls in a four-year program, receives Direct Subsidized Loans for four years, but discontinues enrollment before completing the program. The borrower then enrolls in a two-year program, but does not request Federal student aid of any kind.

Maximum eligibility period for 2-year program .....	3 years.
Subsidized usage period .....	4 years.
Remaining eligibility period .....	- 1 years.
Borrower responsibility for accruing interest .....	The borrower becomes responsible for accruing interest upon enrollment in the two-year program.

The borrower's four-year program has a maximum eligibility period of six years. The borrower receives Direct Subsidized Loans for the four years the borrower is enrolled in that program. Upon withdrawing from that program, the borrower would have been eligible for Direct Subsidized Loans for an additional two years if he or she had remained in that program. However, when the borrower enrolls in the two-year program, the borrower's maximum eligibility period is recalculated as three years. Furthermore, the period during which the borrower previously received

Direct Subsidized Loans counts against the borrower's new maximum eligibility period. The borrower is ineligible for additional Direct Subsidized Loans because the borrower has no remaining eligibility period (the borrower's maximum eligibility period upon enrollment in the two-year program (three years) is less than the sum of the borrower's subsidized usage periods (four years)). The borrower's enrollment in the shorter program causes the borrower to become ineligible for additional Direct Subsidized Loans and to become responsible for accruing

interest on all previously received Direct Subsidized Loans.

We note that, although the calculations in example 13 arithmetically result in a remaining eligibility period that is a negative number, the effect is the same as if the borrower had a remaining eligibility period of zero years and then enrolled in a program of equal or shorter duration. A negative remaining eligibility period does not require that the borrower or institution return any portion of previously disbursed Direct Subsidized Loan.

*Example 14:* A borrower enrolls in a four-year undergraduate program and receives Direct Subsidized Loans for six

years. The borrower then enrolls in a two-year master's degree program.

Maximum eligibility period .....	Not applicable.
Subsidized usage period .....	6 years.
Remaining eligibility period .....	Not applicable.
Borrower responsibility for accruing interest .....	The borrower is not responsible for accruing interest.

The borrower's four-year program has a maximum eligibility period of six years. The borrower received Direct Subsidized Loans for six years. When the borrower enrolls in the graduate program, the borrower is not eligible for additional Direct Subsidized Loans because graduate students are not

eligible for Direct Subsidized Loans. Under § 685.200(f)(3)(i)(B), enrollment in such programs does not result in a borrower becoming responsible for accruing interest. Therefore, enrollment in the master's degree program does not cause the borrower to become

responsible for accruing interest on Direct Subsidized Loans.

*Example 15:* A borrower enrolls in a four-year undergraduate program, receives Direct Subsidized Loans for four years, and graduates on time. The borrower then enrolls in a two-year undergraduate program.

Maximum eligibility period .....	3 years.
Subsidized usage period .....	4 years.
Remaining eligibility period .....	- 1 years.
Borrower responsibility for accruing interest .....	The borrower is not responsible for accruing interest.

The borrower's four year program had a maximum eligibility period of six years and the borrower received Direct Subsidized Loans for four years in that program. When the borrower enrolls in the two-year program, the borrower's maximum eligibility period is recalculated as three years. The sum of the borrower's subsidized usage periods (four years) exceeds the borrower's maximum eligibility period (three years); the borrower has no remaining

eligibility period and is therefore no longer eligible for Direct Subsidized Loans. Under § 685.200(f)(3)(i), because the borrower had no remaining eligibility period upon enrollment in an undergraduate program, the borrower would normally become responsible for accruing interest. However, under § 685.200(f)(3)(iv), because the borrower graduated from the four-year program before becoming responsible for accruing interest, enrollment in the two-

year program does not result in the borrower becoming responsible for accruing interest on any loans.

*Example 16:* A borrower enrolls in a two-year program and receives Direct Subsidized Loans for two years. The borrower does not complete that program, but transfers to a four-year program and receives four years of Direct Subsidized Loans, graduating on time. The borrower then enrolls in a one-year certificate program.

	After year 2 of two-year program	Upon completion of four-year program	Upon attendance in the one-year program
Maximum eligibility period for program.	3 years .....	6 years .....	1.5 years.
Sum of all subsidized usage periods.	2 years .....	6 years .....	6 years.
Remaining eligibility period .....	1 year .....	0 years .....	- 4.5 years.
Borrower responsibility for accruing interest.	Borrower not responsible for accruing interest.	Borrower not responsible for accruing interest.	Borrower not responsible for accruing interest.

The borrower transferred to the four-year program before becoming responsible for accruing interest in the two-year program. When the borrower transferred, the borrower's maximum eligibility period was recalculated as six years, resulting in a remaining eligibility period of four years. The borrower completed the four-year program before becoming responsible for accruing interest. Therefore, under § 685.200(f)(3)(iv), upon enrollment in the one-year certificate program, the borrower does not become responsible for accruing interest on any of the borrower's previously received Direct Subsidized Loans. However, the borrower is not eligible to receive Direct

Subsidized Loans while attending the one-year certificate program.

*Reasons:* MAP-21 added section 455(q)(2) to the HEA, which provides that if a borrower is no longer eligible for Direct Subsidized Loans and is enrolled in a program of education or training for which the borrower is otherwise eligible to receive Direct Subsidized Loans, interest will accrue on all of the borrower's Direct Subsidized Loans that were disbursed to the borrower on or after July 1, 2013. We believe that the limit on subsidy duration in MAP-21 was meant to encourage timely completion.<sup>1</sup> We have

therefore drafted implementing regulations consistent with that goal.

Section 685.200(f)(3) provides that a borrower becomes responsible for accruing interest on all Direct Subsidized Loans only if the borrower has no remaining eligibility period and then enrolls at least half time in an eligible undergraduate program or preparatory coursework at an institution that participates in the Title IV, HEA programs. This is consistent with the requirements of section 455(q) of the HEA. Specifically, the statute provides a progression of actions and consequences

<sup>1</sup> Department states that limiting "subsidy duration will encourage borrowers to complete their educational program in a timelier manner." S.Rpt. 112-176, 112th Cong. 2d Sess. at 190 (2012).

<sup>1</sup> The Senate Appropriations Committee's report on the 2013 Appropriations bill funding the

for Direct Subsidized Loan borrowers which ultimately results in a borrower becoming responsible for accruing interest. First, section 455(q)(3)(A) of the HEA provides that a borrower may not receive Direct Subsidized Loans in excess of the borrower's maximum eligibility period. Second, section 455(q)(1) of the HEA provides that such borrowers lose eligibility for Direct Subsidized Loans if the borrower meets or exceeds his or her maximum eligibility period. Finally, section 455(q)(2) of the HEA provides that, if the borrower is enrolled in a program of education or training after having lost eligibility for Direct Subsidized Loans, interest on the borrower's Direct Subsidized Loans disbursed on or after July 1, 2013 accrues, notwithstanding any other provision of law that would relieve the borrower of the obligation to pay interest.

A consequence of § 685.200(f)(3)(i) is that a borrower will become responsible for accruing interest on outstanding Direct Subsidized Loans by enrolling in an undergraduate program that is shorter than the program for which the borrower previously received Direct Subsidized Loans, even if the borrower does not receive new Direct Subsidized Loans. For the reasons articulated in the preamble discussion of § 685.200(f)(1)(ii)–(iv), the interim final regulations require that a borrower's maximum eligibility period changes to reflect the length of the program in which the borrower is currently enrolled. If a borrower had previously borrowed for a longer program (even if the borrower had a remaining eligibility period greater than zero for that program), then, by virtue of the previous borrowing, it is possible for the borrower to have no remaining eligibility period for the shorter program even if the borrower does not receive any Direct Subsidized Loans for the shorter program. By enrolling in the shorter program, the borrower immediately satisfies the condition of section 455(q)(3)(A) of the HEA (that the borrower is no longer eligible for Direct Subsidized Loans) as well as the condition of section 455(q)(2) of the HEA (that the borrower is enrolled after losing eligibility for additional Direct Subsidized Loans). Therefore, to implement section 455(q) of the HEA, the interim final regulations require that enrollment in a shorter program after meeting or exceeding the borrower's maximum eligibility period will result in the borrower becoming responsible for accruing interest on all outstanding Direct Subsidized Loans.

We recognize that under this framework, a borrower could become

responsible for accruing interest on his or her Direct Subsidized Loans by enrolling in a program of equal or shorter duration even if the borrower completed a prior program in a timely manner. Because we believe that MAP–21 was intended to encourage borrowers to complete their programs in a timely manner, § 685.200(f)(3)(iv) specifies that such a circumstance will not result in borrower responsibility for accruing interest (see examples 15 and 16). Absent such treatment, borrowers who complete their programs in a timely manner, consistent with the statutory intent, could still become responsible for accruing interest. In addition, without this treatment, the regulations would create a disincentive for borrowers who completed their programs on time but are nevertheless unemployed or underemployed and need to return to a short-term educational program for job retraining. For these reasons, we have specified in regulation that borrowers who complete their programs in a timely manner do not become responsible for accruing interest, consistent with the intent of MAP–21.

Section 685.200(f)(3)(i) also specifies that borrowers who become responsible for accruing interest on outstanding Direct Subsidized Loans will be responsible for such interest for the life of the loans, including periods of in-school status, grace periods, deferment periods, and certain periods of repayment under the Income-Based Repayment and Pay As You Earn Repayment plans. Section 455(q)(2) of the HEA provides that the borrower is responsible for accruing interest on outstanding Direct Subsidized Loans “notwithstanding subsection (f)(1)(A) or any other provision of this title.” Section 455(f)(1)(A) of the HEA provides that during periods of eligible deferments, interest does not accrue and is not paid by the borrower. Therefore, under section 455(q)(2) a borrower who becomes responsible for accruing interest does so even during periods of deferment. The interim final regulations implement this statutory requirement by providing that, when a borrower becomes responsible for accruing interest on Direct Subsidized Loans, interest accrues and is the responsibility of the borrower even during periods of deferment. Similarly, section 455(a)(2) of the HEA requires that the borrower becomes responsible for accruing interest during similar periods when interest would not otherwise be the responsibility of the borrower. The interim final regulations therefore require that, when repaying Direct

Subsidized Loans under the Pay As You Earn or Income-Based Repayment plans, a borrower who would otherwise not be responsible for accruing interest during certain periods of repayment will become responsible for such interest if the borrower meets the conditions of § 685.200(f)(3).

Finally, § 685.200(f)(3)(i)(B) reflects section 455(q)(2) of the HEA, which provides that a borrower becomes responsible for accruing interest if the borrower is enrolled in a program for which the borrower is otherwise eligible to receive a Direct Subsidized Loan.

*Regaining Eligibility for Direct Subsidized Loans (§ 685.200(f)(5))*

*Statute:* MAP–21 added section 455(q)(1) to the HEA to provide that a borrower loses eligibility for Direct Subsidized Loans if the period of time for which the borrower has received Direct Subsidized Loans exceeds the aggregate period of enrollment as described in section 455(q)(3) of the HEA.

*Current Regulations:* There are no existing regulations.

*New Regulations:* Section 685.200(f)(5) provides that a first-time borrower who had previously lost eligibility to receive additional Direct Subsidized Loans may regain eligibility for Direct Subsidized Loans if the borrower attends an educational program that is longer than the prior educational program in which the borrower was enrolled. This provision applies even if the borrower has become responsible for accruing interest on previously received Direct Subsidized Loans under § 685.200(f)(3). Example 17 illustrates this regulatory provision:

*Example 17:* A borrower enrolls in a two-year program and receives Direct Subsidized Loans for the maximum eligibility period of three years. The borrower is no longer eligible for further Direct Subsidized Loans in this program. Then, the borrower enrolls in a four-year undergraduate program.

Maximum eligibility period for 4-year program.	6 years.
Subsidized usage period .....	3 years.
Remaining eligibility period .....	3 years.

The borrower's two-year program had a maximum eligibility period of three years and the borrower received Direct Subsidized Loans for three years for that program. Because the borrower had no remaining eligibility period in that program, the borrower becomes ineligible for additional Direct Subsidized Loans. However, when the borrower enrolls in the four-year program the borrower's maximum

eligibility period is 6 years. Since the borrower has used three years of eligibility, the borrower now becomes eligible for an additional three years of Direct Subsidized Loans. Therefore, the borrower has regained eligibility by enrolling in a program of greater duration than the borrower's previous program.

*Reasons:* Section 685.200(f)(5) incorporates the calculations of section 455(q)(3) of the HEA into the interim final regulations. Specifically, this regulatory provision provides that a borrower may regain eligibility for Direct Subsidized Loans if the borrower attends an educational program longer than the program in which the borrower was previously enrolled. A borrower enrolling in such a program would have a new, longer eligibility period and would regain eligibility for additional Direct Subsidized Loans.

Failing to allow a borrower to regain eligibility in this manner would result in inequitable treatment of similarly situated borrowers. For example, if enrolling in a new, longer educational program did not expand a borrower's maximum eligibility period, students enrolling in two different programs would have significantly reduced Direct Subsidized Loan eligibility compared to borrowers who only enrolled in the longer program. Suppose a borrower is enrolled in a two-year program and receives Direct Subsidized Loans for three years. If the borrower then transfers to a four-year program and if the borrower's maximum eligibility period were not adjusted to six years, then the borrower would not be eligible for any additional Direct Subsidized Loans. In contrast, a borrower who had been enrolled in the four-year program from the beginning and who had also received Direct Subsidized Loans for three years would have three years of eligibility remaining. Therefore, to provide equal treatment to these and similar borrowers, under these interim final regulations, borrowers who attend programs of greater duration can regain eligibility for Direct Subsidized Loans.

*Treatment of Preparatory Coursework Required for Enrollment in a Degree or Certificate Program (§ 685.200(f)(6))*

*Statute:* MAP-21 added section 455(q)(3)(B) to the HEA. This section directs the Secretary to specify in regulation how the 150 percent limit on Direct Subsidized Loans applies to students who are enrolled in coursework necessary for admission into a degree or certificate program. Section 484(b)(3)(B) of the HEA authorizes an otherwise-eligible student to receive a Direct Loan for one 12-

month period in a course of study necessary for enrollment in a degree or certificate program.

*Current Regulations:* Current 34 CFR 668.32(a)(1)(ii) reflects the requirements of section 484(b)(3)(B) of the HEA. Section 685.203(a)(6) provides that, for one 12-month period, a student may receive a Direct Loan up to an annual loan limit of \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program, and up to an annual loan limit of \$5,500 for coursework necessary for a graduate or professional degree or certificate program. There are no current regulations that address the application of the 150 percent Direct Subsidized Loan limit on borrowers enrolled in coursework necessary for a graduate or professional program.

*New Regulations:* The interim final regulations provide that the provisions of § 685.200(f), which govern the 150 percent limit on Direct Subsidized Loan eligibility, do not supersede the existing 12-month maximum period of loan eligibility limitation imposed by § 668.32(a)(1)(ii). Section 685.200(f)(6) of the interim final regulations establishes rules for determining the eligibility for Direct Subsidized Loans received for preparatory coursework necessary for enrollment in undergraduate or graduate or professional programs. Section 685.200(f)(6) treats coursework required for an undergraduate degree or certificate program differently than coursework required for a graduate or professional program. However, § 685.200(f)(6)(i) specifies that Direct Subsidized Loans received for either type of preparatory coursework are included in the calculation of a borrower's subsidized usage period.

Section 685.200(f)(6)(ii) provides that the maximum eligibility period for Direct Subsidized Loans for students completing preparatory coursework required for enrollment in an undergraduate program is the maximum eligibility period applicable to the undergraduate program for which the preparatory coursework is required. Enrollment in preparatory coursework does not increase the borrower's maximum eligibility period. Furthermore, § 685.200(f)(6)(iv) provides that for undergraduate preparatory coursework, the borrower becomes responsible for accruing interest if the borrower has no remaining eligibility period in the program for which the coursework is required. This occurs if the maximum eligibility period of the undergraduate program for which the preparatory coursework is required is less than the

sum of the borrower's subsidized usage periods based on the borrower's prior enrollment in one or more educational programs.

Section 685.200(f)(6)(iii) provides that the maximum eligibility period for preparatory coursework required for enrollment in a graduate or professional program is the maximum eligibility period for the undergraduate program for which the borrower most recently received a Direct Subsidized Loan. A borrower with no remaining eligibility period based on the maximum eligibility period for that undergraduate program may not receive Direct Subsidized Loans to complete the required coursework; however, the borrower may receive Direct Unsubsidized Loans.

Section 685.200(f)(6)(v) provides that enrollment in preparatory coursework required for enrollment in a graduate or professional program does not result in the borrower becoming responsible for accruing interest on previously received Direct Subsidized Loans. Examples 18 through 22 illustrate the regulatory treatment of preparatory coursework:

*Example 18:* A borrower enrolls in preparatory coursework required for enrollment in an undergraduate program and receives Direct Subsidized Loans for one year. The borrower then enrolls in a four-year degree program for which the preparatory coursework was required.

Maximum eligibility period .....	6 years.
Subsidized usage period .....	1 year.
Remaining eligibility period .....	5 years.

Under § 685.200(f)(6)(ii), the borrower's maximum eligibility period is calculated as 150 percent of the four-year program, which results in a maximum eligibility period of six years. The borrower received Direct Subsidized Loans for one year of preparatory coursework; under § 685.200(f)(6)(i), this period counts toward the borrower's maximum eligibility period for the four-year program for which the preparatory coursework was required. The difference between the maximum eligibility period (six years) and the sum of the borrower's subsidized usage periods from the preparatory coursework (one year) results in a remaining eligibility period of five years for the four-year program.

*Example 19:* A borrower enrolls in preparatory coursework for enrollment in a two-year undergraduate program and receives Direct Subsidized Loans for one year. The borrower then enrolls in the two-year undergraduate program for which the preparatory coursework

was required and receives Direct Subsidized Loans for two years. The borrower then enrolls in a four-year program.

	After preparatory coursework	After 2-year program	Upon enrollment in 4-year program
Maximum eligibility period of the program .....	3 years .....	3 years .....	6 years.
Sum of subsidized usage periods .....	1 year .....	3 years .....	3 years.
Remaining eligibility period .....	2 years .....	0 years .....	3 years.

When the borrower enrolled in the preparatory coursework, the borrower's maximum eligibility period under § 685.200(f)(6)(ii) was the maximum eligibility period for the two-year program for which the coursework is required, or three years. The borrower received Direct Subsidized Loans for one year of preparatory coursework and had two years of eligibility remaining. The borrower then enrolled in the two-year program. The borrower received Direct Subsidized Loans for two years and, after two years, had no remaining eligibility for Direct Subsidized Loans.

When the borrower enrolls in the four-year program, the borrower's maximum eligibility period under § 685.200(f)(1)(ii) is calculated as 150 percent of the four-year program, or six years. Under §§ 685.200(f)(1)(iii) and 685.200(f)(6)(i), the period in which the borrower previously received Direct Subsidized Loans, including the loan received for the preparatory coursework, count against the borrower's new six-year maximum eligibility period. The sum of the borrower's subsidized usage periods upon enrollment in the four-year program is three years. The

borrower has three years of Direct Subsidized Loan eligibility remaining—the difference between six years and three years.

*Example 20:* A borrower enrolls in a two-year program and receives Direct Subsidized Loans for the maximum eligibility period of three years. The borrower withdraws and wants to enroll in another two-year program, but is required to complete preparatory coursework for enrollment in that program.

Maximum eligibility period .....	3 years.
Subsidized usage period .....	3 years.
Remaining eligibility period .....	0 years.
Borrower responsibility for accruing interest .....	The borrower is responsible for accruing interest.

When the borrower enrolled in the initial two-year program, the borrower's maximum eligibility period was three years. The borrower received Direct Subsidized Loans for the three-year maximum eligibility period. The borrower wants to enroll in another two-year program but is required to complete preparatory coursework for admission to that program. Under § 685.200(f)(6)(ii), the borrower's maximum eligibility period for the preparatory coursework is three years—the maximum eligibility period for the

new two-year program. Upon enrollment in the preparatory coursework for the new two-year program, the borrower does not have any remaining eligibility period because the borrower has already received Direct Subsidized Loans for three years. In addition, under § 685.200(f)(6)(iv), enrollment in the undergraduate preparatory coursework causes the borrower to become responsible for accruing interest on all of the borrower's previously received Direct Subsidized Loans, because the borrower has no

remaining eligibility period. Finally, § 685.200(f)(3)(iv) does not apply because the borrower did not complete the initial two-year program.

*Example 21:* A borrower enrolls in a four-year undergraduate program and receives Direct Subsidized Loans for five years. The borrower wants to enroll in a graduate degree program, but is required to complete preparatory coursework for enrollment in that program.

Maximum eligibility period .....	6 academic years.
Subsidized usage period .....	5 academic years.
Remaining eligibility period .....	1 academic year, subject to the limitation below.

Under § 685.200(f)(1)(ii), the borrower's maximum eligibility period for the four-year program is six academic years (150 percent of the four-year undergraduate program). The borrower received Direct Subsidized Loans for five years. Under § 685.200(f)(6)(iii), the borrower's eligibility for Direct Subsidized Loans for preparatory coursework necessary for enrollment in a graduate program is based on the borrower's most recent

undergraduate program of study in which the borrower received a Direct Subsidized Loan. The borrower has a remaining eligibility period of one academic year based on the six academic year maximum eligibility period for the prior undergraduate program, but § 668.32(a)(1)(ii) limits loan eligibility for preparatory coursework to one consecutive 12-calendar month period. The borrower therefore has a remaining eligibility

period of one academic year, but must use that eligibility during one consecutive 12 calendar month period.

*Example 22:* A borrower enrolls in a four-year undergraduate program and receives Direct Subsidized Loans for the maximum eligibility period of six years. The borrower wants to enroll in a graduate program, but is required to complete preparatory coursework for enrollment in that program.

Maximum eligibility period .....	6 years.
Subsidized usage period .....	6 years.

Remaining eligibility period .....	0 years.
Borrower responsibility for accruing interest .....	The borrower is not responsible for accruing interest.

Under § 685.200(f)(1)(ii), the borrower’s maximum eligibility period for the four-year program is six years. The borrower received Direct Subsidized Loans for the maximum eligibility period of six years. Under § 685.200(f)(6)(iii), the borrower’s eligibility for Direct Subsidized Loans for preparatory coursework for enrollment in a graduate program is based on the borrower’s most recent undergraduate program of study in which the borrower received a Direct Subsidized Loan. In this case, the borrower used the six years of maximum eligibility for the four-year undergraduate program and has no remaining eligibility period in the preparatory coursework necessary for enrollment in the graduate program. Although the borrower has lost eligibility for Direct Subsidized Loans, § 685.200(f)(6)(v) provides that the borrower’s enrollment in the preparatory coursework does not result in the borrower becoming responsible for accruing interest on the borrower’s previously received Direct Subsidized Loans.

*Reasons:* Section 685.200(f)(6) of the interim final regulations implements section 455(q)(3)(B)(ii) of the HEA, which requires the Secretary to promulgate regulations that address how the 150 percent limitations apply to borrowers enrolled in coursework necessary for enrollment in an eligible undergraduate program or a graduate or professional program.

We chose to treat Direct Subsidized Loans received for preparatory coursework as part of the borrower’s related undergraduate program for purposes of the 150 percent limit. This approach is consistent with the statutory goal of creating an incentive for borrowers to complete their programs in a timely manner. We also believe the maximum eligibility period calculated under the 150 percent limit will generally allow borrowers to receive Direct Subsidized Loans while completing 12 calendar months of preparatory coursework and the undergraduate program for which the preparatory coursework is intended. Furthermore, borrowers in such preparatory coursework that are ineligible for further Direct Subsidized Loans would still be eligible for Direct Unsubsidized Loans to complete their preparatory coursework.

The interim final regulations treat preparatory coursework for enrollment

in a graduate or professional program differently than coursework required for an undergraduate program. Section 685.200(f)(6)(iii) limits a borrower’s Direct Subsidized Loan eligibility for graduate or professional preparatory coursework to the maximum eligibility period applicable to the undergraduate program for which the borrower most recently received a Direct Subsidized Loan.

We chose this approach because preparatory coursework for graduate or professional programs is considered baccalaureate in nature for Direct Loan purposes and is therefore subject to undergraduate loan limits under current § 685.203. Such coursework is also limited to one 12-calendar month period and is a series of specified courses required for admission to a program rather than a stand-alone program of study. An alternative we considered was to treat this coursework as a one-year stand-alone program; however, we rejected this approach because it would cause all borrowers with subsidized usage periods of 1.5 years or more from their prior undergraduate enrollment to become ineligible for Direct Subsidized Loans to complete this preparatory coursework (see example 13 and discussion in the related reasons section).

In addition to addressing borrower eligibility for Direct Subsidized Loans during preparatory coursework, the interim final regulations also address the possibility that a borrower will become responsible for accruing interest that could result from enrollment in such coursework after a borrower reaches the 150 percent limit and is no longer eligible for additional Direct Subsidized Loans. For enrollment in preparatory coursework necessary for enrollment in an undergraduate program, § 685.200(f)(6)(iv) provides that a borrower would become responsible for accruing interest only if the borrower had no remaining eligibility period in the program for which the coursework is required. We believe that this provision will be inapplicable to most borrowers because borrowers rarely enroll in preparatory coursework for an undergraduate program after having already received a significant number of Direct Subsidized Loans. In addition, such borrowers will ultimately become responsible for accruing interest by enrolling in the undergraduate program for which the preparatory coursework is required.

Therefore, preventing borrower responsibility for accruing interest during the related preparatory coursework would only delay borrower responsibility for accruing interest for a short period.

In contrast, under § 685.200(f)(6)(v), a borrower’s enrollment in preparatory coursework required for a graduate or professional program does not result in the borrower becoming responsible for accruing interest on previously received loans. Borrowers enrolling in graduate or professional preparatory coursework often have borrowed Direct Subsidized Loans during undergraduate programs. Borrower responsibility for accruing interest caused by enrollment in such preparatory coursework could have a significant impact on borrowers who then enroll in a graduate or professional program—such borrowers would be responsible for interest that accrues during all the years of the graduate or professional program. If this were to occur, the costs of borrowing for graduate or professional programs would increase significantly. For example, suppose a borrower with no remaining eligibility period and \$23,000 in Direct Subsidized Loan principal (the aggregate loan limit) enrolled in one year of preparatory coursework for a two-year master’s degree program. Assuming an interest rate of 6.8% on the borrower’s loans, the borrower would be responsible for more than \$5,000 in capitalized interest that accrued during those three years of enrollment. Without § 685.200(f)(6)(v), we believe such increased costs of borrowing could deter borrowers who require preparatory coursework from pursuing graduate- or professional-level study.

Furthermore, without § 685.200(f)(6)(v), borrowers who require preparatory coursework for graduate or professional programs would otherwise be treated inequitably compared to those who do not need such preparatory coursework. Because enrollment in graduate and professional programs does not result in borrower responsibility for accruing interest, without § 685.200(f)(6)(v), borrowers who need such preparatory coursework would become responsible for accruing interest while those who do not need preparatory coursework would not. This would result in significantly divergent and inequitable principal balances at the conclusion of the graduate or professional coursework. For these

reasons, the interim final regulations prevent enrollment in such preparatory coursework from resulting in borrower responsibility for accruing interest.

*Treatment of Teacher Certification Coursework for Which the Institution Awards No Academic Credential (§ 685.200(f)(7))*

*Statute:* MAP–21 added section 455(q)(3)(B) to the HEA. This section directs the Secretary to specify in regulations how the 150 percent Direct Subsidized Loan eligibility limit will apply to borrowers at an eligible institution who are enrolled in coursework required for a professional State credential or certification necessary for employment as an elementary or secondary school teacher, but for which the institution awards no academic credential. Section 484(b)(4) of the HEA authorizes a student to receive Title IV student loans for such coursework.

*Current Regulations:* Current 34 CFR 668.32(a)(1)(iii) reflects section 484(b)(4) of the HEA, which provides that students are eligible for Direct Loans if they are enrolled in teacher certification coursework that does not lead to an academic credential awarded by an institution, but which is required for certification by the State to teach in an elementary or secondary school. Current § 685.203(a)(7) provides that a student may receive up to an annual Direct Subsidized Loan limit of \$5,500 for such coursework. There are no current regulations that specify the treatment of students enrolled in teacher certification coursework for purposes of the 150 percent Direct Subsidized Loan limit. (Throughout the preamble to this interim final regulation, any reference to “teacher certification coursework” only includes teacher certification coursework for which the institution awards no academic credential, unless otherwise specified.)

*New Regulations:* Section 685.200(f)(7)(i) of the regulations provides that the maximum eligibility period for a first-time borrower enrolled in teacher certification coursework is calculated as 150 percent of the published length of the teacher certification coursework in which the borrower is currently enrolled.

Section 685.200(f)(7)(ii) provides that, when determining a borrower’s remaining eligibility period for teacher certification coursework, only periods in which a borrower received Direct Subsidized Loans for such teacher certification coursework are included in the borrower’s subsidized usage period.

Section 685.200(f)(7)(iii) provides that, when determining a borrower’s remaining eligibility period for any program or coursework other than teacher certification coursework, periods in which a borrower received Direct Subsidized Loans for such teacher certification coursework are excluded.

Together, these latter two paragraphs provide that we treat the sum of the borrower’s subsidized usage periods accrued during teacher certification coursework separately from the borrower’s subsidized usage periods accrued during all other undergraduate programs or coursework in which the borrower may have enrolled. Direct Subsidized Loans received for teacher certification coursework count only against the maximum eligibility period for the borrower’s teacher certification coursework.

Finally, § 685.200(f)(7)(iv) provides that enrollment in teacher certification coursework for which an academic credential is not awarded by the institution does not cause a borrower to become responsible for accruing interest on the borrower’s outstanding Direct Subsidized Loans, including any Direct Subsidized Loans received for periods of undergraduate study.

The provisions of § 685.200(f)(7) cover teacher certification coursework for which an institution does not award an academic credential. Teacher preparation programs for which an institution awards an academic credential are governed by § 685.200(f)(1)–(f)(6), similar to other undergraduate or graduate programs.

Examples 23 through 25 illustrate the treatment of borrowers enrolled in teacher certification coursework.

*Example 23:* A borrower completes a four-year baccalaureate degree program and receives four years of Direct Subsidized Loans for that program. The borrower then enrolls in teacher certification coursework that is one year in duration.

Maximum eligibility period for the teacher certification coursework.	1.5 years.
Subsidized usage period .....	0 years.
Remaining eligibility period .....	1.5 years.

The borrower received Direct Subsidized Loans for four years before enrolling in the teacher certification coursework. When the borrower enrolls in the one year of teacher certification coursework, the calculation of the borrower’s maximum eligibility period, subsidized usage period, and remaining eligibility period are unaffected by the borrower’s prior enrollment or borrowing. The borrower therefore has 1.5 years of eligibility for Direct Subsidized Loans remaining.

*Example 24:* A borrower enrolls in one year of teacher certification coursework and receives Direct Subsidized Loans for one year. The borrower then enrolls in separate teacher certification coursework for two years.

Maximum eligibility period for the teacher certification coursework.	3 years.
Subsidized usage period .....	1 year.
Remaining eligibility period .....	2 years.

The borrower received Direct Subsidized Loans for one year of teacher certification coursework, and has a remaining eligibility period of 0.5 years after the first year. When the borrower enrolls in the separate two years of teacher certification coursework, the borrower’s maximum eligibility period is three years (150 percent of the two years of coursework), but the borrower’s previous subsidized usage period of one year counts against the borrower’s new maximum eligibility period. Therefore, the borrower has a remaining eligibility period of two years.

*Example 25:* A borrower enrolls in a two-year undergraduate degree program and receives Direct Subsidized Loans for three years. The borrower then enrolls in two years of teacher certification coursework, receives Direct Subsidized Loans for three years, and is therefore not eligible for more Direct Subsidized Loans. The borrower continues enrollment in the teacher certification coursework.

Maximum eligibility period for the teacher certification coursework .....	3 years.
Subsidized usage period .....	3 years.
Remaining eligibility period .....	0 years.
Borrower responsibility for accruing interest .....	The borrower does not become responsible for accruing interest on loans for the undergraduate program or teacher certification coursework.



After completing the two-year undergraduate program, the borrower enrolled in two years of teacher certification coursework and received Direct Subsidized Loans for three years. When the borrower enrolled in the teacher certification coursework, the borrower's maximum eligibility period and remaining eligibility period were both three years because the borrower's previous undergraduate borrowing does not count against the teacher certification maximum eligibility period. The borrower subsequently used all three years of Direct Subsidized Loan eligibility for the teacher certification coursework and therefore has no remaining eligibility period for Direct Subsidized Loans in the teacher certification coursework. When the borrower continues enrollment in the teacher certification coursework, this does not result in the borrower becoming responsible for accruing interest on his or her existing Direct Subsidized Loans, either those received for the undergraduate degree program or those received for the teacher certification coursework.

*Reasons:* Section 685.200(f)(7) implements section 455(q)(3)(B)(ii) of the HEA, which requires the Secretary to promulgate regulations that address how the 150 percent Direct Subsidized Loan eligibility limitations apply to borrowers enrolled in teacher certification coursework for which the institution awards no academic credential. The interim final regulations reflect the unique characteristics of this coursework within the general requirements of section 455(q)(3)(A) of the HEA.

We chose to calculate the 150 percent subsidized limit for teacher certification coursework in a manner similar to the approach used to calculate the limit for undergraduate degree programs. However, in calculating the remaining eligibility period, we chose to exclude Direct Subsidized Loans borrowed for earlier undergraduate programs. Borrowers enrolled in teacher certification coursework required for licensure or certification have already completed baccalaureate degree programs for which they may have received numerous Direct Subsidized Loans. Because this teacher certification coursework is typically one or two years in duration, counting earlier undergraduate loans would likely cause numerous borrowers to lose eligibility for further Direct Subsidized Loans and to become responsible for accruing interest upon enrollment (see example 13). This may discourage students from pursuing education to become teachers. Therefore, we chose to treat borrowing

and enrollment in this coursework separately from the borrowing and enrollment in undergraduate programs.

The Secretary believes that individuals should be encouraged to become teachers and to continue teaching. The Secretary also believes that teacher certification coursework is an important national resource for teacher preparation and continued professional development. Treating borrowing during teacher certification coursework separately for purposes of the 150 percent limit preserves sufficient Direct Subsidized Loan eligibility for most borrowers who have financial need while preventing such borrowers from having unlimited Direct Subsidized Loan eligibility for teacher certification coursework. Allowing unlimited eligibility for such coursework would be contrary to the intent of MAP-21, which established a time limit on eligibility for Direct Subsidized Loans and we believe was intended to provide incentives for timely completion.

In addition to treating Direct Subsidized Loans borrowed for teacher certification coursework as separate from prior undergraduate Direct Subsidized Loan borrowing, § 685.200(f)(7)(iv) also provides that a borrower will not be responsible for accruing interest on prior loans based on subsequent enrollment in teacher certification coursework. Many States have certification standards that require teachers to take teacher certification coursework to continue teaching in the State. For these teachers, enrollment in this coursework is legally required for continued employment, not an option that a borrower can exercise. Therefore, we have determined that enrollment in this coursework should not result in the borrower becoming responsible for accruing interest on all of the borrower's outstanding loans.

*New Entrance and Exit Counseling Requirements (§ 685.304(a)(6)(xiii), § 685.304(b)(4)(xii))*

*Statute:* Section 485(l) of the HEA requires an eligible institution to provide entrance counseling to first-time borrowers at or prior to disbursement of a Direct Subsidized Loan or a Direct Unsubsidized Loan. The counseling may be provided in person, on a separate written form provided to and signed and returned by the borrower, or online with the borrower acknowledging receipt. The entrance counseling must include:

- Information on the terms and conditions of the loan;
- The borrower's responsibilities under the loan;

- The effects of the loan on other student aid eligibility;
- An explanation of the use of the master promissory note;
  - An explanation of interest accrual and capitalization;
  - The borrower's option to pay the accruing interest while in school;
  - The consequences of not maintaining half-time enrollment;
  - The borrower's responsibility to contact the institution if the borrower withdraws;
- Sample monthly repayment amounts;
- Information on the National Student Loan Data System (NSLDS);
- The borrower's obligation to repay the loan regardless of program completion or completion within the regular timeframe for completion;
  - The consequences of default; and
  - The name and contact information for a person the borrower may contact if the borrower has any questions.

Section 485(b) of the HEA requires eligible institutions to provide exit counseling to Direct Subsidized Loan or Direct Unsubsidized Loan borrowers prior to the borrower completing the course of study or at the time the borrower departs from, or drops below half-time enrollment at, the institution. The exit counseling must provide:

- Information on the available repayment plans and their features;
- Debt management strategies to facilitate loan repayment;
- Loan forgiveness and cancellation provisions with a description of their terms and conditions;
- Forbearance provisions and their terms and conditions;
  - The consequences of default;
  - The effects of loan consolidation;
  - The types of tax benefits that may be available; and
  - The availability of NSLDS and how it can be used by borrowers to access their records and obtain information on the repayment status of their loans.

*Current Regulations:* Current § 685.304(a)(6) and (b)(4) of the Department's regulations reflect the borrower entrance and exit counseling requirements contained in the HEA. The information that institutions are required to provide to borrowers during entrance and exit counseling does not currently include information on the Direct Subsidized Loan eligibility limits and the potential borrower responsibility for accruing interest.

*New Regulations:* The regulations governing entrance and exit counseling requirements are being amended to require that institutions inform borrowers of the 150 percent Direct Subsidized Loan eligibility limitations

and possible borrower responsibility for accruing interest.

We have added § 685.304(a)(6)(xiii) of the Direct Loan regulations to require that the information provided as part of entrance counseling include:

- The possible loss of eligibility for additional Direct Subsidized Loans;
- How a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are determined;

- The potential for a borrower becoming responsible for all accruing interest on Direct Subsidized Loans during in-school periods, grace periods, and periods of authorized deferment; and

- The impact of borrower responsibility for accruing interest on the borrower's total debt.

We have also amended § 685.304(b)(4)(xii) of the Direct Loan regulations governing required exit counseling to require, in addition to the information required as part of entrance counseling, that information be provided to the borrower on:

- The sum of the borrower's subsidized usage periods at the time of the exit counseling;

- How to get information from NSLDS on whether he or she has become responsible for accruing interest on any of his or her Direct Subsidized Loans and whether the borrower is eligible to receive additional Direct Subsidized Loans;

- The possible consequences of receiving additional Direct Subsidized Loans for additional undergraduate programs; and

- The potential for a borrower becoming responsible for all accruing interest on Direct Subsidized Loans during in-school periods, grace periods, and periods of authorized deferment, even if the borrower does not receive an additional Direct Subsidized Loan.

We will modify our entrance counseling material prior to July 1 to reflect the additional information that must be provided to borrowers under new § 685.304(a)(6)(xiii). We will also modify our exit counseling material to reflect the additional information that must be provided to borrowers under new § 685.304(b)(4)(xi). Institutions may continue to rely on the Department's revised counseling materials to comply with these revised regulatory requirements. The Department will post an electronic announcement on the Information for Financial Aid Professionals Web site when revised counseling materials are available.

*Reasons:* The amendments made to the HEA by MAP-21 significantly alter

borrower eligibility requirements for Direct Subsidized Loans for first-time borrowers on or after July 1, 2013. The amendments also make changes to the terms and conditions of those loans. It is critical that institutions communicate information on these important changes to borrowers as part of their entrance and exit counseling. Without this information, borrowers could be affected by the 150 percent limit without knowing about the limit, without understanding how it is calculated, and without understanding the significant financial implications for them if they reach or exceed the limit. Therefore, we have added this information to the information that institutions must provide during entrance and exit counseling. Enhanced counseling about these requirements will mitigate borrower confusion, encourage accurate budgeting and debt management by borrowers, and help borrowers make informed educational plans mindful of all potential costs.

#### *Additional Reporting Requirements and Modifications to Departmental Systems*

To effectively implement the regulatory provisions contained in these interim final regulations, the Department will make a number of changes to NSLDS and to the Common Origination and Disbursement (COD) System. The COD System will collect information needed to determine whether a borrower continues to be eligible for Direct Subsidized Loans; NSLDS will collect information needed to determine whether a borrower becomes responsible for the accruing interest on the Direct Subsidized Loans the borrower previously received. Institutions will not be responsible for officially determining whether a borrower has a remaining eligibility period under these interim final regulations. The Department will have the primary responsibility for making eligibility determinations, determining whether a borrower becomes responsible for accruing interest, and making this information available to borrowers. In the event that there are questions regarding the validity of any determination made by the Department with respect to these provisions, we will develop a process to research data integrity issues, and, if necessary, adjust previously made determinations. However, institutions will be required to report additional information to both the COD System and NSLDS, as discussed below. We are committed to making the necessary systems changes as quickly as possible and will issue further guidance at a later date.

The 150 percent limit only applies to borrowers who are "first-time borrowers" on or after July 1, 2013. The Secretary will have the information necessary to determine whether a borrower is a first-time borrower as defined in § 685.200(f)(1)(i). Institutions will not be required to determine or report this information. However, institutions will be required to supply the information below for all borrowers who receive Direct Loans on or after the date that we implement the system changes necessary to support these interim final regulations.

To allow the Department to calculate a borrower's maximum eligibility period, institutions will be required to report additional information to the COD System when originating and disbursing Direct Loans. The additional information will include, but not be limited to:

- The Classification of Instructional Programs (CIP) Code for the program in which the borrower is enrolled;
- The credential level for the borrower's program;
- The length of the borrower's program (in academic years, months, or weeks);
- The enrollment status of the borrower at the time the loan is disbursed (full time, half time, or three-quarter time);
- If appropriate, an indication that the Direct Loan is intended for preparatory coursework for an undergraduate program;
- If appropriate, an indication that the Direct Loan is intended for preparatory coursework for a graduate or professional program; and
- If appropriate, an indication that the Direct Loan is intended for teacher certification coursework for which the institution does not award an academic credential.

**Note:** An enrollment status of less than half time will not be included in the COD System because a borrower is not eligible to receive a Direct Loan for enrollment on a less than half-time basis (this information will continue to be included in NSLDS, however).

We will use the CIP Code, credential level, and program length to define the program in which the borrower is enrolled. We need this information because section 455(q) of the HEA and these implementing regulations require that the borrower's maximum eligibility period be determined program by program.

We are requiring that institutions report the borrower's enrollment status as of the date that the loan is disbursed, as full time, three-quarter time, or half time because the Secretary generally

prorates the subsidized usage period in cases where the borrower is enrolled less than full time.

Finally, institutions must identify Direct Loans that are intended to support preparatory coursework for undergraduate programs, preparatory coursework for graduate or professional programs, and teacher certification coursework because the interim final regulations treat loans for such coursework differently than loans for other programs.

To calculate the borrower's subsidized usage period, the COD System will divide the number of days in each loan period by the number of days in the academic year associated with the loan, as reported by the institution in the award record for the loan. An institution's failure to report this information accurately will not only cause borrowers to appear to have less eligibility for Direct Subsidized Loans than they should but may also cause disbursement records to be rejected by the COD System or result in adverse findings in compliance reviews of the institution, fines, or other sanctions.

By comparing the sum of the borrower's subsidized usage periods to the borrower's maximum eligibility period, the COD System will reject any disbursement record of a Direct Subsidized Loan if the borrower has lost eligibility for Direct Subsidized Loans as a result of new § 685.200(f)(2).

The COD System will track and calculate a borrower's maximum eligibility period, subsidized usage period, and remaining eligibility period, and the Secretary will provide borrowers and institutions with information about the borrower's subsidized usage periods using Student Aid Reports (SARs) and Institutional Student Information Records (ISIRs) through the Central Processing System (CPS). This will allow institutions to counsel Direct Loan borrowers about their maximum eligibility periods and remaining eligibility periods based on the length of the program in which the borrower is enrolled. This information will also allow institutions to determine whether the borrower has any Direct Subsidized Loan eligibility remaining before submitting an origination or disbursement record to the COD System.

In addition to the additional reporting to the COD System, institutions will be required to report additional information to NSLDS as part of their reporting of enrollment information on student loan borrowers. The Department requires this additional information to implement the requirements concerning borrowers' responsibility for accruing

interest. The additional information will include, but not be limited to:

- The CIP Code and credential level for the program in which the borrower is enrolled;
- The length of the program in which the borrower is enrolled in academic years, months, or weeks (consistent with institutional reporting in the COD System);
- The enrollment status of the borrower at the time the institution completes the enrollment reporting;
- If appropriate, an indication that the borrower is enrolled in preparatory coursework for an undergraduate program;
- If appropriate, an indication that the borrower is enrolled in preparatory coursework for a graduate or professional program; and
- If appropriate, an indication that the borrower is enrolled in teacher certification coursework for which the institution does not award an academic credential.

The Secretary will use the information regarding CIP Code, credential level, and program length to define the program in which the borrower is enrolled (e.g., as a graduate program or an undergraduate program) and to calculate the appropriate 150 percent limit.

The Secretary will also use the information about the length of the borrower's current program to ensure that borrowers do not improperly become responsible for accruing interest.

Finally, the Secretary will use information that institutions are already required to report concerning a student's graduation to determine whether a borrower will not become responsible for accruing interest under § 685.200(f)(3)(iv) because the borrower completed his or her program in a timely manner.

The Secretary is requiring that institutions flag borrower enrollment in preparatory coursework and teacher certification coursework because of the special rules that apply to borrowers enrolled in those programs.

We will use this information in NSLDS to determine whether a borrower becomes responsible for accruing interest on his or her Direct Subsidized Loans (and the effective date on which the borrower becomes responsible for that interest). This information will be conveyed to the borrower's Federal loan servicer, which will notify the borrower that he or she is responsible for accruing interest. The servicer will also make the necessary adjustments to reflect the borrower's

responsibility for accruing interest on the borrower's Direct Subsidized Loans.

The Department will modify its entrance and exit counseling material on StudentLoans.gov to provide the information described in new §§ 685.304(a)(6)(xiii) and 685.304(b)(4)(xii) for institutions that use the Department's online counseling material to comply with the regulatory entrance and exit counseling requirements.

*Executive Orders 12866 and 13563*

#### Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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 stated in the Executive Order.

This regulatory action would have an annual effect on the economy of more than \$100 million because the transfers between borrowers who exceed the 150 percent limit and the government total approximately \$3.9 billion over loan cohorts 2013 to 2023. Therefore, this action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and have determined that the benefits justify the costs.

We have also reviewed these interim final regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent

permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these interim final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

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

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

#### 1. Potential costs and benefits

These interim final regulations implement the statutory requirements in MAP–21 that limit the availability of

Direct Subsidized Loans to 150 percent of the program length and that cause borrowers to become responsible for accruing interest if they are no longer eligible for Direct Subsidized Loans as a result. The net budget savings that will be generated by these interim final regulations will contribute to paying for the extension of the 3.4 percent interest rate on Direct Subsidized Loans made between July 1, 2012, and June 30, 2013. In the following sections, we summarize the effects these interim final regulations are likely to have on the Federal Government, institutions of higher education (IHEs), and students.

*Federal Government:* The eligibility limitations and potential borrower responsibility for accruing interest implemented in these interim final regulations are expected to result in net budget savings as some Direct Subsidized Loans shift to Direct Unsubsidized Loans and as some borrowers become responsible for accruing interest on their Direct Subsidized Loans earlier than they otherwise would. The estimated savings associated with the interim final regulations were initially analyzed as PB 2013 budget policy, and that estimate of \$3.597 billion in savings was included in the Department’s mid-session review (MSR) budget baseline in the summer of 2012, shortly before the passage of MAP–21. When the specifics of the legislation and interim final regulations became available, the estimate was updated, using revised economic assumptions and loan volume, resulting in additional estimated savings of approximately \$325 million.

Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the Federal 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 OMB’s Credit Subsidy Calculator. 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

Governmentwide 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 interim final regulations.

In order to evaluate the effect of these interim final regulations, the Department used data from NSLDS to simulate a representative pool of Direct Subsidized Loan borrowers for the upcoming cohorts affected by the interim final regulations. Based on borrowing patterns in the NSLDS data for existing cohorts, the Department estimated which borrowers will lose eligibility for Direct Subsidized Loans and which borrowers will become responsible for accruing interest. The model accounted for program length, type, and whether the borrower transferred from one institution to another to determine the loss of Direct Subsidized Loan eligibility and borrower responsibility for accruing interest. The estimated savings were then generated using the Department’s Student Loan Model based on the anticipated shift in loan volume from Direct Subsidized Loans to Direct Unsubsidized Loans, a reduction in anticipated deferments, and a reduced number of days for which the borrower is not responsible for interest that accrues. Additional information on the effect of these factors is available in the *Students* section of this regulatory impact analysis.

*Institutions of Higher Education:* The interim final regulations most directly affect the Federal Government and student borrowers, with a more limited effect on IHEs. While a small percentage of student borrowers is expected to lose eligibility for additional Direct Subsidized Loans or to become responsible for accruing interest on existing Direct Subsidized Loans, those students would still be eligible for Direct Unsubsidized Loans and would not necessarily withdraw from their program of study, potentially limiting the effect of the interim final regulations on an IHE’s revenues. While some Direct Subsidized Loan borrowers may shift their educational plans or the sources of funding used to pay for their programs, the availability of substitute sources of funding or other students who would fill the IHE’s capacity could also limit the effect of the interim final regulations on institutions.

The *Paperwork Reduction Act* section of this preamble describes the additional reporting requirements for IHEs related to these interim final regulations, such as requirements to identify the length of the programs in which a student borrower is enrolled,

the borrower's enrollment status, and the type of program. In addition, IHEs will need to update the financial aid counseling they provide to student borrowers to reflect the new limitations on Direct Subsidized Loans and the Department will provide guidance to assist with this process. The Department estimates that this reporting and financial aid counseling activity will cost IHEs approximately \$1.6 million.

*Students:* The effect of these interim final regulations on students is the potential loss of Direct Subsidized Loan eligibility and responsibility for accruing interest on existing Direct Subsidized Loans for new borrowers starting on July 1, 2013. The examples presented in this preamble demonstrate the effect of the changes in a variety of scenarios under the interim final regulations. While the specific effects on individual students will depend on many factors (including the use of Direct Subsidized Loans, transfers between programs of different published lengths, program completion, or

enrollment in multiple programs), we have analyzed the effects of the interim final regulations across a simulated pool of borrowers subject to the regulations.

As discussed, first-time borrowers as of July 1, 2013, will be subject to the new eligibility limitations. Borrowers who are otherwise eligible for Direct Subsidized Loans will not be eligible for additional Direct Subsidized Loans after taking out Direct Subsidized Loans for a period that equals or exceeds 150 percent of the published length of their program. The limitation has two parts: (1) The determination that a borrower has received Direct Subsidized Loans for a period equal to or greater than 150 percent of the length of the borrower's program, and (2) once that limit has been reached or exceeded, the borrower's responsibility for accruing interest on prior undergraduate loans is triggered by the borrower's further enrollment in an undergraduate program of equal or shorter duration, except for borrowers who complete their programs before becoming responsible

for accruing interest. The borrower is responsible for interest that accrues from the date that he or she becomes responsible for accruing interest, not from the original disbursement date of the loan. As described in more detail in the *Federal Government* section of this regulatory impact analysis, the Department generated estimates of the effect of the interim final regulations on the Federal budget and on student borrowers using a pool of hypothetical borrowers and patterns of borrowing behavior from NSLDS. Based on NSLDS data, the Department was able to estimate the percentage of student borrowers in different categories who would potentially trigger the eligibility limitations and responsibility for accruing interest under the interim final regulations. Transfer students and those at two-year programs were most affected by the interim final regulations. The estimates presented in Table 2 demonstrate the effect of the interim final regulations by sector.

TABLE 2—ESTIMATED EFFECT OF INTERIM FINAL REGULATIONS BY SECTOR

First-time borrowers at	Percent of loans	Percent of loans in category affected by the policy	Percent of affected loans in each category
<4-Year Public .....	16.8	20.0	55.2
<4-Year Private .....	10.5	4.8	8.3
4-Year Public .....	38.9	3.3	21.5
4-Year For-Profit .....	13.6	2.3	5.2
4-Year Not-for-Profit .....	20.2	3.0	9.8

Affected borrowers may be subject to different combinations of limitations depending on their situations. For example, some borrowers who do not intend to take out additional Direct Subsidized Loans will still become responsible for accruing interest on existing loans if they enroll in an undergraduate program after reaching or exceeding the 150 percent limit, except for those borrowers who complete their first program before becoming responsible for accruing interest. In contrast, other borrowers may not trigger the eligibility limitations on prior loans from a two-year program if they

later transfer to a four-year program and become eligible for additional subsidized loans for which they are otherwise eligible.

To quantify the effect of the interim final regulations on student borrowers, the Department estimated the number of borrowers in each cohort who would exceed the 150 percent Direct Subsidized Loan limit. Because borrowers can have loans in multiple cohorts, Table 3 presents the estimated percentage and number of borrowers in a particular cohort year affected by the interim final regulations, not an unduplicated number of borrowers

across all cohort years. The percentage of borrowers affected increases in later cohorts as the percentage of the cohort representing first-time borrowers after July 2013 increases. The percentage of borrowers affected reaches approximately 6.54 percent by the 2023 cohort when almost all borrowers should be first-time borrowers who are subject to the interim final regulations. Those included as affected borrowers, approximately 578,000 by the 2023 cohort, would lose eligibility for future Direct Subsidized Loans and become responsible for accruing interest.

TABLE 3—ESTIMATED NUMBER OF AFFECTED BORROWERS BY COHORT

	2013	2014	2015	2016	2017	
Estimated Borrowers in Cohort .....	7,149,480	7,319,118	7,493,094	7,671,527	7,854,541	
% affected .....	0.87%	1.87%	3.02%	4.03%	4.78%	
Estimated Borrowers Affected .....	62,429	136,827	226,332	309,205	375,793	
	2018	2019	2020	2021	2022	2023
Estimated Borrowers in Cohort .....	8,042,264	8,234,825	8,432,361	8,635,008	8,842,911	8,842,911

	2018	2019	2020	2021	2022	2023
% affected .....	5.28%	5.59%	5.88%	6.11%	6.32%	6.54%
Estimated Borrowers Affected .....	424,358	460,359	495,568	527,703	558,766	577,928

Another factor in the savings to the Federal Government and the costs to affected borrowers is borrower responsibility for accruing interest on existing Direct Subsidized Loans once

the borrower enrolls after meeting or exceeding the 150 percent Direct Subsidized Loan limit. Table 4 presents the estimated average number of days that borrowers would be responsible for

accruing interest across the whole cohort and for affected borrowers in the cohort only.

TABLE 4—ESTIMATED AVERAGE NUMBER OF DAYS OF BORROWER RESPONSIBILITY FOR INTEREST BY COHORT

Average days interest	2013	2014	2015	2016	2017
All Borrowers .....	3.7579	8.6056	14.2657	18.9932	21.2188
Affected Borrowers Only .....	430.360	460.328	472.287	482.849	475.775

  

Average days interest	2018	2019	2020	2021	2022	2023
All Borrowers .....	22.4407	22.9607	23.4826	24.0255	24.4895	24.9137
Affected Borrowers Only .....	471.536	463.780	457.369	453.188	449.612	444.795

The Department used this information to estimate the cost of the loss of Direct Subsidized Loan eligibility and the days for which the borrower is responsible for accruing interest on existing Direct Subsidized Loans for individual affected borrowers. While the specific impact on a given borrower depends on multiple factors, the average cost to affected borrowers is approximately \$843, based

on an assumed interest rate of 6.8 percent.

In addition to the NSLDS-based analysis, the Department also examined data from the 2004/2009 Beginning Postsecondary Students Longitudinal Study<sup>2</sup> (BPS) and analyzed what the impacts would have been if the interim final regulations had been in place for the 2003 cohort. BPS data show that the average borrower who started in a four-

year program and who was still enrolled in his or her original undergraduate program with no stops, transfers, or degree after six years had a little under \$14,000 in outstanding subsidized loans. Overall, the average borrower who was still enrolled after six consecutive years of undergraduate studies at the same institution with no degree had just under \$24,000 in Direct Subsidized and Unsubsidized Loans.

TABLE 5A—LOAN DEBT FOR STUDENTS WHO BEGAN AT A FOUR-YEAR INSTITUTION IN THE 2003–2004 ACADEMIC YEAR AND HAD NO STOPOUTS<sup>3</sup> THROUGH 2009 (EDUCATION CONTINUED AT FIRST INSTITUTION ONLY)

	Avg total unsub. through 2009	Percent of students with unsub. loan debt > 0 through 2009 (percent)	Avg total sub. and unsub. loan debt through 2009	Avg total sub. loan debt through 2009	Percent of students with sub. loan debt > 0 through 2009
No degree, still enrolled .....	\$14,028	57	\$23,947	\$13,792	74
No degree, transferred .....	9,046	46	14,687	9,913	58
No degree, left without return .....	6,753	35	9,998	6,364	52
Attained degree .....	9,014	39	15,574	11,418	49

When borrowers who transferred to another institution but did not have any

stopouts in the six-year period are included, the average subsidized and

total Stafford loan debts are slightly lower, as displayed below in Table 5b.

TABLE 5B—LOAN DEBT FOR STUDENTS WHO BEGAN AT A FOUR-YEAR INSTITUTION IN THE 2003–2004 ACADEMIC YEAR AND HAD NO STOPOUTS THROUGH 2009 (EDUCATION CONTINUED ANYWHERE)

	Avg total unsub. through 2009	Percent of students with unsub. loan debt > 0 through 2009 (percent)	Avg total sub. and unsub. loan debt through 2009	Avg total sub. loan debt through 2009	Percent of students with sub. loan debt > 0 through 2009
No degree, still enrolled .....	\$12,741	58	\$21,765	\$13,128	73

<sup>2</sup> Tracy Hunt-White, "2004/2009 Beginning Postsecondary Students Longitudinal Study," March 2011, [http://nces.ed.gov/datalab/index.aspx?ps\\_x=ceabdef](http://nces.ed.gov/datalab/index.aspx?ps_x=ceabdef).

<sup>3</sup> "Stopout" is defined as an interruption of continuous enrollment during the measured time period. Students who did not have a stopout were

continuously enrolled during the measured time period.

TABLE 5B—LOAN DEBT FOR STUDENTS WHO BEGAN AT A FOUR-YEAR INSTITUTION IN THE 2003–2004 ACADEMIC YEAR AND HAD NO STOPOUTS THROUGH 2009 (EDUCATION CONTINUED ANYWHERE)—Continued

%	Avg total unsub. through 2009	Percent of students with unsub. loan debt > 0 through 2009 (percent)	Avg total sub. and unsub. loan debt through 2009	Avg total sub. loan debt through 2009	Percent of students with sub. loan debt > 0 through 2009
No degree, left without return .....	6,667	36	9,949	6,416	52
Attained degree .....	9,067	40	15,558	11,308	50

Under these interim final regulations, a borrower who enrolls in a seventh year of undergraduate studies in a four-year program would become responsible for accruing interest on Direct Subsidized Loans. Using the data from Table 5b, if the interim final regulations were in place, the average borrower would have entered that seventh year with \$13,128 in Direct Subsidized Loans. In that seventh year, in addition to losing eligibility for additional Direct Subsidized Loans, the borrower would become responsible for \$892.67 of interest (this and other calculations assume that current law applies—therefore interest would accrue at a rate

of 6.8 percent). This is in addition to interest accruing on existing Direct Unsubsidized Loans as well as any Direct Unsubsidized Loans taken out during that seventh year.

Based on data from the 2004/2009 BPS and assuming these interim final regulations were in place, the average borrower who became responsible for accruing interest on existing Direct Subsidized Loans by enrolling in a seventh year of undergraduate studies but did not take out any additional student loans would have accrued almost \$1,800 more in interest during that seventh year of school and the following grace period (assuming graduation in the seventh year). If the

borrower had taken out an additional loan in the seventh year, he or she would have been limited to Direct Unsubsidized Loans then and in the future, and interest would have accrued on all of the borrower's loans. Under a 10-year Standard Repayment Plan, the additional costs for a borrower who becomes responsible for interest on previously subsidized loans would be about \$20 per month and \$2,400 over the life of the borrower's loans. This estimate does not account for the possibility that the borrower could request deferments, during which time the borrower would also be responsible for accruing interest.

TABLE 6—ESTIMATED IMPACTS OF INTERIM FINAL REGULATIONS ON SIXTH-YEAR AND SEVENTH-YEAR UNDERGRADUATE STUDENTS WHO BEGAN AT A FOUR-YEAR INSTITUTION IN THE 2003–2004 ACADEMIC YEAR AND HAD NO STOPOUTS THROUGH 2009 (EDUCATION CONTINUED ANYWHERE). NOTE: CHART CALCULATES INTEREST USING RELEVANT INTEREST RATES FROM 2003–2009 AND ASSUMES AN EQUAL DISTRIBUTION OF LOANS THROUGH GRADUATION. THESE FIGURES ARE ONLY INTENDED TO SERVE AS EXAMPLES OF HOW THE INTERIM FINAL REGULATIONS COULD AFFECT BORROWERS, NOT TO FORECAST ACTUAL FUTURE EFFECTS ON INDIVIDUAL BORROWERS

	Total stafford	Sub loans	Unsub loans	Interest	Amount due at repayment	10-Year standard monthly payments (6.8%)	Total amount repaid (10-year standard)
Borrower 1, graduated at end of year six	\$21,765	\$13,128	\$8,638	\$1,828	\$23,593	\$271	\$32,507
Borrower 2, enrolls in seventh year but takes out no additional loans .....	21,765	13,128	8,638	3,531	25,297	291	34,933
Borrower 3, enrolls in seventh year and takes out an additional unsub loan .....	25,393	13,128	12,265	3,778	29,171	336	40,284

Borrowers who start in two-year programs will have three years of Direct Subsidized Loan eligibility. However, some borrowers may choose to transfer to a longer program (e.g., a four-year program) after that third year and subsequently increase their maximum eligibility for Direct Subsidized Loans. Data from the 2004/2009 BPS show that the average borrower who began at a two-year institution in fall 2003 and was

still enrolled without a degree at the end of the 2005–2006 academic year had approximately \$4,652 of Direct Subsidized Loan debt. However, approximately 20 percent of students who began at a two-year institution in fall 2003 and were still enrolled without a degree at the end of the 2005–2006 academic year had any subsidized loan debt.

Unlike a borrower in a four-year program who reaches the eligibility limits, a borrower in a two-year program who has taken out three years of Direct Subsidized Loans will not become responsible for interest on existing Direct Subsidized Loans if he or she enrolls in a longer program instead of enrolling in the fourth year of the two-year program.

TABLE 7—LOAN DEBT FOR STUDENTS WHO BEGAN AT A TWO-YEAR INSTITUTION IN THE 2003–2004 ACADEMIC YEAR AND HAD NO STOPOUTS THROUGH 2006 (EDUCATION CONTINUED AT FIRST INSTITUTION ONLY)

	Avg total stafford unsub loan debt through 2006	Percent of students with unsub loan debt > 0 through 2006 (percent)	Avg total stafford sub loan debt through 2006	Percent of students with sub loan debt > 0 through 2006 (percent)	Avg total stafford loan debt through 2006
Attained associate's degree .....	\$1,843	29.5	\$6,011	39.9	\$9,517
Attained certificate .....	860	17.7	4,157	33.1	6,499
No degree, still enrolled .....	855	17.6	4,652	20.6	7,209
No degree, not enrolled .....	445	12.2	2,954	22.9	4,558
No degree, transferred .....	997	23.0	4,100	33.9	6,213
No degree, left without return .....	954	19.5	4,051	26.3	6,927

The data in Table 8 show that borrowers in two-year programs who become responsible for interest on Direct Subsidized Loans by enrolling in a fourth year of that program (but who do not take out an additional loan)

would not experience a significant financial impact during that fourth year under these interim final regulations. Those who receive an additional Direct Unsubsidized Loan during the fourth year would experience a larger impact

because the loan received in the fourth year would be a Direct Unsubsidized Loan and such borrowers would be responsible for accruing interest on all loans, including Direct Subsidized Loans.

TABLE 8—ESTIMATED IMPACT OF INTERIM FINAL REGULATIONS ON THIRD- AND FOURTH-YEAR UNDERGRADUATE STUDENTS WHO STARTED IN A TWO-YEAR PROGRAM IN FALL 2003 AND HAVE NOT TRANSFERRED OR HAD ANY LAPSES IN ENROLLMENT

[Note: Chart calculates interest using relevant interest rates from 2003–2007 and assumes an equal distribution of loans through graduation. These figures are only intended to serve as examples of how the interim final regulations could affect borrowers, not to forecast actual future effects on individual borrowers.]

	Total sub. and unsub.	Sub. loans	Unsub. loans	Interest	Amount due at repayment	10-year standard monthly payments (6.8%)	Total amount repaid (10-year standard)
Borrower 1, graduates at end of year 3 ..	\$7,209	\$4,652	\$2,557	\$213	\$7,422	\$85	\$10,250
Borrower 2, enrolls in fourth year of two-year program and graduates with no additional loans .....	7,209	4,652	2,557	782	7,992	92	11,037
Borrower 2, enrolls in fourth year of two-year program and graduates with additional loans .....	9,612	4,652	4,960	946	10,558	122	14,580

As mentioned earlier, some borrowers who begin in two-year programs will transfer to longer programs. A borrower may enroll in a two-year program for three years and decide to transfer to a four-year program for the fourth year, which would prevent the borrower from becoming responsible for accruing interest and allow the borrower to receive three additional years of Direct Subsidized Loans. However, there is a risk that borrowers who transfer from two-year programs after three years without completing an associate's degree and who lose some of their earned credit hours may become responsible for interest on existing Direct Subsidized Loans if they are unable to complete the four-year degree in the three years of remaining eligibility.

The financial impact of these interim final regulations on borrowers who are responsible for accruing interest during

the repayment period will depend upon a number of factors. As stated earlier, borrowers with equal loan debt entering repayment may end up paying substantially different amounts overall depending on whether borrowers request deferments because a borrower who becomes responsible for interest on existing Direct Subsidized Loans will also be responsible for such interest during any periods of deferment. Borrowers who do not continue enrollment after meeting or exceeding the 150 percent limit are not responsible for accruing interest during such periods.

These interim final regulations also limit Direct Subsidized Loan eligibility for borrowers in teacher certification coursework. Previous borrowing for other programs does not affect a borrower's eligibility for Direct Subsidized Loans for teacher certification coursework; instead,

borrowers will begin new eligibility periods upon enrollment in such a program and receipt of a Direct Subsidized Loan. As with any other program, a borrower can only extend his or her eligibility period by enrolling in longer teacher certification coursework. As discussed previously in this preamble, subsidized usage periods accrued in teacher certification coursework will count against the maximum eligibility period of other teacher certification coursework. Once the borrower has met or exceeded the 150 percent limitation, he or she will still be able to use Direct Unsubsidized Loans to pay for eligible programs and subsequent enrollment in such programs will not cause a borrower to become responsible for accruing interest on any existing Direct Subsidized Loans.

The limits on the use of Direct Subsidized Loans to pay for teacher



certification coursework may come at a cost to affected borrowers. Some States require teachers to complete these programs on a periodic basis to maintain their ability to teach, and these teachers may have to use Direct Unsubsidized Loans to pay for additional certificates. As with other programs, the overall impact of these regulations on borrowers will depend upon borrower behavior throughout repayment.

These interim final regulations will also have potential financial effects on borrowers who enroll in preparatory coursework for undergraduate or graduate programs. Direct Subsidized Loans used to pay for preparatory coursework for undergraduate programs will count against borrowers' maximum eligibility periods. Therefore, borrowers enrolled in preparatory courses for undergraduate studies will have shorter periods to complete their undergraduate coursework without losing eligibility for Direct Subsidized Loans. Enrolling in preparatory coursework for a graduate program will not cause a borrower to become responsible for interest on existing Direct Subsidized Loans, but will still count against the maximum eligibility period of the undergraduate program for which the borrower most recently received a Direct Subsidized Loan. Borrowers who exhaust their Direct Subsidized Loan eligibility during their undergraduate studies will be limited to Direct Unsubsidized Loans during these courses.

In addition to the estimated costs described above, these interim final regulations may offer non-quantifiable benefits to students and the general population. Data from the 2004/2009 BPS show that about 58 percent of first-time, full-time students in bachelor degree programs completed their programs within six years. These interim final regulations could motivate students to finish on time and increase the nation's on-time college graduation

rate. An improved on-time graduation rate could help reduce student debt and provide more qualified and highly trained individuals for the country's workforce. Reduced debt levels may allow graduates greater economic participation, such as by purchasing homes or cars or starting small businesses.

We welcome comments about the costs and benefits of the changes implemented in these interim final regulations.

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

2. *Alternatives considered.*

No alternatives were considered for the amendments to §§ 685.202 and 685.304 because these amendments implement changes to the HEA enacted by Congress, and we did not have discretion in developing these amendments. With respect to § 685.200, we did discuss and consider alternative approaches to the regulations on preparatory coursework for undergraduate studies and treatment of teacher preparatory programs.

In the case of preparatory coursework, the Department wanted to ensure that the regulations did not have a significant negative impact on borrowers who need this coursework to prepare for undergraduate studies. Research shows that preparatory coursework only has a modest effect on the length of time that students take to graduate.<sup>4</sup> For this reason, we declined to treat these courses as stand-alone programs for the purposes of subsidized loan eligibility.

We also considered multiple approaches to the treatment of teacher certification coursework. MAP-21 requires the Secretary to promulgate regulations that address how the eligibility limit on Direct Subsidized Loans and borrower responsibility for

accruing interest will operate for borrowers enrolled at an eligible institution in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State. Because many States require teachers to obtain such certificates as a prerequisite for teaching or as a requirement to continue teaching, we believed that these programs should be treated as stand-alone entities not affected by Direct Subsidized Loan receipt in prior undergraduate programs. However, to be consistent with the overall intent of the 150 percent limitation, we provided in these interim final regulations that teacher certification coursework is a continuation of the previous teacher certification coursework for the purpose of subsidized loan eligibility.

In the spirit of good governance, the Department has done its due diligence to ensure that these interim final regulations represent the Department's best efforts to regulate and are consistent with Congress's intent in passing MAP-21.

*Accounting Statement*

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these interim final regulations. Expenditures are classified as transfers from affected student loan borrowers to the Federal Government and the IHEs' cost of compliance with the paperwork requirements.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Amount or description
Annual Benefits .....	Not quantified. The 150% limit may encourage borrowers' on-time completion of programs.
Annual Costs .....	\$5.21 (7%). \$5.31 (3%). Cost of Paperwork Compliance.
Annualized Monetized Transfers .....	\$212.8 (7%). \$237.6 (3%).
From Whom To Whom? .....	From affected student loan borrowers to the Federal Government.

<sup>4</sup> Paul Attewell et al., "New Evidence on College Remediation," *Journal of Higher Education* 77, no. 5 (October 2006): 886-924.

*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 regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 685.200.)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

To send any comments that concern how the Department could make these interim final regulations easier to understand, see the instructions in the **ADDRESSES** section.

*Initial Regulatory Flexibility Act Analysis*

These interim final regulations primarily affect the terms of loans made by the Department to some student loan borrowers. However, some of the provisions also modify the financial aid counseling and reporting requirements of IHEs. The U.S. Small Business Administration Size Standards define “for-profit institutions” as “small businesses” if they are independently

owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. The standards define “non-profit institutions” as “small organizations” if they are independently owned and operated and not dominant in their field of operation, or as “small entities” if they are institutions controlled by governmental entities with populations below 50,000. Under these definitions, an estimated 4,365 IHEs subject to the proposed paperwork compliance provisions of the interim final regulations are small entities.

Accordingly, we have prepared this initial regulatory flexibility analysis to present an estimate of the effect on small entities of the statutory changes as implemented through these interim final regulations. The Department welcomes comments and information on this analysis.

*Succinct Statement of the Objectives of, and Legal Basis for, the Regulations*

The interim final regulations reflect changes made to the Direct Loan Program by MAP–21. Specifically, these regulations reflect the provisions in MAP–21 that amended the HEA to extend the 3.4 percent interest rate on Direct Subsidized Loans from July 1, 2012 to July 1, 2013, and to limit a borrower from receiving Direct Subsidized Loans for a period in excess of 150 percent of the published length of the educational program in which the borrower is enrolled.

*Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply*

These interim final regulations affect IHEs that participate in the Federal Direct Loan Program and borrowers. Approximately 60 percent of IHEs qualify as small entities, even if the range of revenues at the not-for-profit

institutions varies greatly. Using data from the Integrated Postsecondary Education Data System, the Department estimates that approximately 4,365 IHEs qualify as small entities—1,891 are not-for-profit institutions, 2,196 are for-profit institutions with programs of two years or less, and 278 are for-profit institutions with four-year programs.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements*

The interim final regulations modify or increase the paperwork burden on entities participating in the Direct Loan Program, as described in the *Paperwork Reduction Act* section of this preamble. In particular, institutions will be required to report information that will allow the Department to calculate the maximum eligibility period, subsidized usage period, and remaining eligibility period for each borrower. The information will include: The program’s CIP Code; the credential level of each program; the length of the program for which the loan is intended; the enrollment status of the borrower at the time the loan is disbursed; whether a loan is for teacher certification coursework for which the institution awards no academic credential; whether a loan is for preparatory coursework necessary for enrollment in an undergraduate program; and whether the loan is for preparatory coursework necessary for enrollment in a graduate or professional program. Institutions will also provide program information to the Department’s NSLDS system and include information about the 150 percent limit in financial aid entrance and exit counseling. The estimated burden on small entities from these requirements is summarized in Table 9.

TABLE 9—ESTIMATED PAPERWORK BURDEN ON SMALL ENTITIES

	Reg section	OMB Control No.	Cost	Cost per institution
COD reporting of enrollment status, program length, teacher preparation programs, preparatory coursework, and CIP code.	685.301(e) .....	OMB 1845—NEW1 ...	\$852,234	\$195
NSLDS reporting .....	685.309(b) .....	OMB 1845—NEW1 ...	65,953	15
Additional entrance and exit counseling requirements .....	685.304 .....	OMB 1845—NEW1 ...	268,566	62

*Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With These Interim Final Regulations*

These interim final regulations are unlikely to conflict with or duplicate existing Federal regulations.

*Alternatives Considered*

No alternatives were considered for small entities because these interim final regulations implement changes to the HEA enacted by Congress, and are necessary to implement the statutory changes. The information required to be reported should be readily available to IHEs. Further, the counseling information is critically important for borrowers to receive when they first take out loans subject to the 150 percent limitation and as they make their educational plans, so delays for small entities are not possible. The Department is committed to helping all institutions meet the financial counseling requirements of the interim final regulations and will provide materials or guidance to assist with this requirement.

*Waiver of Rulemaking and Delayed Effective Dates*

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. In addition, all Department regulations for programs authorized by Title IV of the HEA (Title IV, HEA programs) are subject to the negotiated rulemaking requirements of section 492 of the HEA. Section 492 provides specifically that any regulations issued for the Title IV, HEA programs are subject to negotiated rulemaking to obtain the advice of and recommendations from individuals and groups involved in the student financial assistance programs.

MAP-21 waives the negotiated rulemaking requirements in section 492 of the HEA (as well as the master calendar requirements in section 482 of the HEA) for regulations to implement the 150 percent limit on Direct Subsidized Loan eligibility in the Direct Loan Program. Consequently, the negotiated rulemaking requirements in section 492 of the HEA do not apply to these interim final regulations and we will not subject them to negotiated rulemaking.

Under section 553(a)(3)(B) of the APA, an agency is not required to

conduct notice-and-comment rulemaking when the agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Although these interim final regulations are subject to the APA’s notice-and-comment requirements, the Secretary has determined that it would be impracticable to conduct notice-and-comment rulemaking in time to implement these changes by July 1, 2013.

In section 455(q) of the HEA, as added by MAP-21, Congress made a number of changes to the Direct Loan Program to be effective on July 1, 2013. Even on an extremely expedited timeline, the Department could not feasibly conduct notice-and-comment rulemaking, promulgate final regulations, make necessary financial aid systems changes, and provide counseling to borrowers in time to implement the statutory changes by July 1, 2013.

Though MAP-21 was signed into law on July 6, 2012, nearly one year prior to the date that the first cohort of borrowers could be affected, the Department was unable to begin the regulatory drafting process immediately. In order to ensure the continued integrity of the Title IV loan programs, the Department first had to assess its operational capabilities and what limitations these placed on possible regulatory approaches. This internal analysis took several months and therefore limited the period during which the Department could draft implementing regulations.

The time period in which the Department could conduct notice-and-comment rulemaking was further limited by the statute’s specification of a July 1, 2013, effective date, and requirement that institutions and the Department take specific steps in order to implement the statutory requirements by that date. First, although MAP-21 specifies that borrowers are not affected until July 1, 2013, institutions begin preparing financial aid packages in the spring that precedes an award year (an award year begins on July 1). Shortly after a student’s financial aid package is prepared, the student must sign a master promissory note and complete entrance counseling. Only then is the financial aid award, effective as of July 1, disbursed to the student. Thus, the regulations need to be in place long enough before July 1 to allow schools to prepare, counsel students about, and make financial aid awards.

Second, the Department must make certain necessary systems and operational changes before July 1 in order to comply generally with the HEA

and protect borrowers, institutions, and taxpayers. Without changes to current financial aid systems, schools would be unable to accurately monitor a borrower’s eligibility for Direct Subsidized Loans under the 150 percent limit because the determination of a borrower’s maximum eligibility period and remaining eligibility period requires information about a borrower’s attendance at all institutions, which may not be available to the institution the borrower is presently attending. Therefore, the Department must have regulations with legal force to make the necessary system changes to NSLDS and the COD System to monitor borrower eligibility, alert borrowers and institutions that a borrower is about to reach or has reached the 150 percent limit on eligibility for Direct Subsidized Loans, and ensure that no additional Direct Subsidized Loans are originated or disbursed to an ineligible borrower. Making such changes in a timely manner requires that regulatory drafting and operational adjustments occur contemporaneously.

If the Department were required to conduct notice-and-comment rulemaking first, the Department could not begin implementing these changes until after final regulations were published. Because interim final regulations have legal force on the date of publication, the Department can begin making these necessary changes. If the Department were required to submit draft regulations for notice-and-comment rulemaking, the Department could not begin implementing such changes until final regulations were published. We would be forced to delay the initiation of operational changes until late 2013 or early 2014, well after the July 1, 2013, date set forth in the statute.

In addition, we need to ensure that borrowers are advised of the terms and conditions of their eligibility for Direct Loans before July 1, 2013. The statute itself does not provide sufficient detail on the 150 percent limit. Therefore, we are not able to provide borrowers with the terms of the 150 percent limit on eligibility or with information on how they will be affected until the interim final regulations are published.

Notice-and-comment rulemaking is impracticable because the Department could not conduct notice-and-comment rulemaking, issue final regulations, make necessary systems changes, and provide counseling for borrowers by July 1, 2013. In sum, if notice-and-comment rulemaking were not waived, the Department would be unable to administer the Direct Loan Program in compliance with the HEA.

Finally, we note that, contrary to public interest, there would be a substantial loss of revenue for the Federal Government if these interim final regulations were not implemented until after July 1, 2013. As previously noted, section 455(q) of the HEA is not self-implementing. If the regulations are not published until after July 1, 2013, the Department will not be able to apply the restrictions to borrowers until the date the regulations are published. Therefore, borrowers who take out loans between July 1, 2013, and the date of publication would not be subject to the 150 percent limit. As a result, the Government would have increased costs for interest subsidies on Direct Subsidized Loans and would not receive the expected savings from interest payments made by the borrowers in this cohort who exceed the 150 percent limitation.

The Department estimates that approximately 62,000 borrowers in the 2013 cohort of borrowers (0.87 percent) would exceed the 150 percent limit at some point during their postsecondary education and be affected by the proposed regulations. Many of them would not be subject to the regulatory provisions if the effective date were delayed. The estimated savings associated with these affected borrowers in the 2013 cohort is \$197 million. For example, the Department estimates that if implementation were delayed until January 1, 2014, the \$197 million in outlay savings associated with the 2013 cohort in the 2013 MSR Baseline would be eliminated in addition to \$251 million in outlay savings across the 2013 to 2023 cohorts from the PB2014 baseline. This is a total of \$448 million in savings reductions over the 2013 to 2023 cohorts.

For these reasons, the Secretary has determined that notice-and-comment rulemaking is impracticable and contrary to the public interest. Although the Department is adopting these regulations on an interim final basis, we request public comment on these regulations. After consideration of public comments, the Secretary will publish final regulations.

We also note that the APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement the regulations sooner (5 U.S.C. 553(d)(3)). In addition, these final regulations are a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, et seq.). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however,

provides that, if an agency finds for good cause (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice of, and public procedure on, a rule are impracticable, unnecessary, or contrary to the public interest, the rule shall take effect at such time as the Federal agency promulgating the rule determines. We are waiving the delayed effective dates under both the APA and CRA and thus these interim final regulations will take effect on their date of publication. We are taking this action because if we do not waive the delayed effective dates we are at risk of not meeting the statutory deadline of July 1, 2013, and facing significant repercussions, as explained in this section of the preamble. Thus, we find there is good cause to waive the delayed effective dates under the APA and the CRA.

#### *Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless the OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. No person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Under 5 CFR 1320.13 we have requested OMB to conduct its review of this collection of information on an emergency basis. We have asked OMB to approve the collection of information on May 16, 2013, the same date these interim final regulations are published in the **Federal Register**. This does not affect your ability to comment on the interim final regulations, or the collection associated with it. In addition, the Department is concurrently asking for comments under

the 60-day comment period for the regular collection. In order for those comments to be considered for the regular collection, the Department requests comments by July 15, 2013. If you want to comment on the proposed information collection requirements, please send your comments through the Federal eRulemaking Portal at <http://www.regulations.gov> through by selecting Docket ID number [ED-2013-OPE-0066].

The manner in which the Department will be implementing § 685.200 will require institutions to submit additional information to the COD System and to NSLDS under the authority in §§ 685.301(e) and 685.309(b), respectively. Therefore, the collection requirements associated with §§ 685.301(e) and 685.309(b) will change as a result of this rulemaking. Although §§ 685.301(e) and 685.309(b) are not modified by this rulemaking, the burden associated with each provision will ultimately change as a result of this rulemaking and the analysis of the burden associated with those provisions will accompany this rulemaking. Section 685.304 also contains information collection requirements. The Department has submitted a copy of the information collection requests associated with these sections to OMB for its review.

#### *Section 685.301(e)—COD Reporting Requirements by Institutions*

Section 685.301(e) provides that institutions originating and disbursing loans under the Direct Loan Program must report a student's "payment data" to the Secretary. The term "payment data" is defined in § 685.102(b) to mean "an electronic record that is provided to the Secretary by an institution showing student disbursement information". The Department has implemented this provision by requiring that institutions electronically report student and Direct Loan information to the COD System. The provisions of § 685.200(f) provide that a borrower is not eligible to receive an additional Direct Subsidized Loan if the borrower has no remaining eligibility period. These interim final regulations also provide different rules for borrowers who are enrolled in teacher certification coursework for which the institution awards no academic credential, preparatory coursework necessary for enrollment in an undergraduate program, and preparatory coursework necessary for enrollment in a graduate or professional program.

The Department will determine whether the borrower has continued eligibility for Direct Subsidized Loans.

To ensure that the Department has the information necessary to make that determination, institutions will be required to report additional information to the Department's COD System. For example, institutions will be required to report: The program's CIP Code; the credential level of each program; the length of the program for which the loan is intended; the enrollment status of the borrower at the time the loan is disbursed; whether a loan is for teacher certification coursework for which the institution awards no academic credential; whether a loan is for preparatory coursework necessary for enrollment in an undergraduate program; and whether the loan is for preparatory coursework necessary for enrollment in a graduate or professional program.

These data will allow the Department to calculate the borrower's maximum eligibility period, subsidized usage period, and remaining eligibility period as described in § 685.200(f)(1)(ii)–(f)(1)(iv), determine whether the borrower is eligible to receive an additional Direct Subsidized Loan, and ensure that borrowers do not receive Direct Subsidized Loans if they are no longer eligible under § 685.200(f)(2).

To estimate the total increase in burden imposed on institutions, the Department estimated the average number of reports that each institution submitted to COD each business day (by institutional type, i.e., public, private, proprietary). We based our calculations of estimated burdens on a 248 business-day year (365 days, less 104 weekend days and 13 Federal holidays) and assumed that institutions submit data in large batches, not separately, for each individual borrower. We estimate that the additional reporting will add 1 minute (0.02 hours) of additional burden per report.

Of the 5,847 institutions that disbursed Direct Loans during the most recently completed award year, 1,933 of them are public institutions. The average number of reports per day that public institutions submit is 2.73. We further estimate that additional reporting will add 26,174 hours (1,933 institutions multiplied by 248 business days, multiplied by 2.73 reports per day, multiplied by 0.02 hours per report).

Of the 5,847 institutions that disbursed Direct Loans during the most recently completed award year, 1,750 of them are private, not-for-profit institutions. The average number of reports per day that private, not-for-profit institutions submit is 1.29. We estimate that additional reporting will add 11,197 hours (1,750 institutions multiplied by 248 business days,

multiplied by 1.29 reports per day, multiplied by 0.02 hours per report).

Of the 5,847 institutions that disbursed Direct Loans during the most recently completed award year, 2,164 of them are proprietary institutions. The average number of reports per day that proprietary institutions submit is 0.84. We further estimate that additional reporting will add 9,016 hours (2,164 institutions multiplied by 248 business days, multiplied by 0.84 reports per day, multiplied by 0.02 hours per report).

Collectively, as a result of the new reporting requirements created for public, private and proprietary institutions, the total burden associated with § 685.301(e), under 1845–NEW1, will increase by 46,387 hours (26,174 hours for public institutions + 11,197 hours for private, not-for-profit institutions + 9,016 hours for proprietary institutions).

#### *Section 685.309(b)—NSLDS Enrollment Reporting by Institutions*

Section 685.309(b) provides that eligible institutions that enroll a Direct Loan borrower must report information about the borrower's enrollment to the Secretary. The Department has implemented these provisions by requiring institutions to electronically report, at least twice per year, student and loan information to NSLDS. The new Direct Subsidized Loan regulations in § 685.200(f)(3) provide that a borrower becomes responsible for accruing interest on any Direct Subsidized Loans he or she previously received if the borrower has no remaining eligibility period and enrolls in certain eligible programs. The new regulations also provide specific rules for borrowers who are enrolled in teacher certification coursework for which the institution awards no academic credential, preparatory coursework necessary for enrollment in a graduate or professional program, and programs for which borrowers are not otherwise eligible for Direct Subsidized Loans.

The Department will determine whether the borrower is responsible for accruing interest on his or her previously received Direct Subsidized Loans. To ensure that the Department has the information to necessary to make that determination, institutions will be required to report additional information to NSLDS. For example, institutions will be required to report: The CIP code and the credential level for the program in which a borrower is enrolled; the length of the program in academic years, weeks, or months (consistent with current institutional

reporting in the COD System); and the enrollment status of the borrower.

These data will allow the Department to determine whether a borrower who is not eligible for additional Direct Subsidized Loans is responsible for accruing interest on his or her previously received Direct Subsidized Loans.

To estimate the total increase in burden imposed on institutions due to the new reporting requirements under § 685.309(b), we divided institutions into two groups—institutions that use enrollment servicers, which are more automated and take less time to report enrollment to the Department, and institutions that do not use enrollment servicers and therefore take longer to report enrollment to the Department. We assumed that each institution that reports enrollment does so twice per year (as minimally required). We estimate that the additional reporting will, for institutions using an enrollment servicer, add 0.25 hours of burden per report. For institutions that do not use an enrollment servicer, we estimate that the additional reporting will add 0.5 hours of additional burden per report.

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 2,710 of them are public institutions. Of the 2,710 public institutions, 2,092 use enrollment servicers. For the 2,092 public institutions that use enrollment servicers, we estimate that additional reporting will add 1,046 hours (2,092 institutions multiplied by 0.25 additional hours per report, multiplied by 2 reports per year).

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 2,453 of them are private, not-for-profit institutions. Of the 2,453 private, not-for-profit institutions, 1,894 use enrollment servicers. For the 1,894 private, not-for-profit institutions that use enrollment servicers, we estimate that additional reporting will add 947 hours (1,894 institutions multiplied by 0.25 additional hours per report, multiplied by 2 reports per year).

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 3,033 of them are proprietary institutions. Of the 3,033 proprietary institutions, 2,342 use enrollment servicers. For the 2,342 proprietary institutions that use enrollment servicers, we estimate that additional reporting will add 1,171 hours (2,342 institutions multiplied by 0.25 additional hours per report, multiplied by 2 reports per year).

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 2,710 of them are public institutions. Of the 2,710 institutions, 618 of them do not use enrollment servicers. For the 618 public institutions that do not use enrollment servicers, we estimate that additional reporting will add 618 hours (618 institutions multiplied by 0.5 additional hours per report, multiplied by 2 reports per year).

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 2,453 of them are private, not-for-profit institutions. Of the 2,453 private, not-for-profit institutions, 559 of them do not use enrollment servicers. For the 559 private, not-for-profit institutions that do not use enrollment servicers, we estimate that additional reporting will add 559 hours (559 institutions multiplied by 0.5 additional hours per report, multiplied by 2 reports per year).

Of the 8,196 institutions that reported enrollment information during the most recently completed award year, 3,033 of them are proprietary institutions. Of the 3,033 proprietary institutions, 691 of them do not use enrollment servicers. For the 691 proprietary institutions that do not use enrollment servicers, we estimate that additional reporting will add 691 hours (691 institutions multiplied by 0.5 additional hours per report, multiplied by 2 reports per year).

Collectively, as a result of the new reporting requirements, the total burden associated with § 685.309(b), under 1845–NEW1, will be increased by 5,032 hours (1,046 hours for public institutions using enrollment servicers + 947 hours for private, not-for-profit institutions using enrollment servicers + 1,171 hours for proprietary institutions using enrollment servicers + 618 hours for public institutions not using enrollment servicers + 559 hours for private, not-for-profit institutions not using enrollment servicers + 691 hours for proprietary institutions that do not use enrollment servicers).

#### *Section 685.304—Entrance and Exit Counseling for Borrowers by Institutions*

The interim final regulations implement a new statutory requirement that significantly limits a borrower's eligibility for Direct Subsidized Loans and potentially results in the borrower becoming responsible for accruing interest on existing Direct Subsidized Loans. Under section 485 of the HEA, which requires that borrowers be provided with entrance and exit counseling on the provisions governing Federal student aid, institutions will be

required to revise the entrance and exit counseling provided to borrowers.

For entrance counseling, the added counseling requirements under § 685.304(a)(6)(xiii) will require institutions to explain: (1) The possible loss of eligibility for additional Direct Subsidized Loans; (2) how a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated; (3) the possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans during all periods; and (4) the impact of borrower responsibility for accruing interest on the borrower's total debt.

For exit counseling, the requirements added under new § 685.304(b)(4)(xii) will require institutions to explain: (1) How the borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated; (2) the sum of the borrower's subsidized usage periods, as determined under § 685.200(f)(1)(iii), at the time of the exit counseling; (3) the consequences of continued borrowing or enrollment; (4) the impact of the borrower becoming responsible for accruing interest on total student debt; (5) that the Secretary will inform the student borrower of whether he or she is responsible for accruing interest on his or her Direct Subsidized Loans; and (6) that the borrower can access NSLDS to determine whether he or she is responsible for accruing interest on any Direct Subsidized Loans as provided in § 685.200(f)(3).

The burden associated with entrance and exit counseling is two-fold, there is burden on borrowers, who are required to complete entrance counseling by virtue of their participation in the Title IV loan programs and there is burden on institutions, which are required to provide counseling to such borrowers.

We estimate that each entrance counseling interview will take 2 additional minutes (0.03 hours) per borrower to complete and estimate the number of borrowers who took entrance counseling in the last award year as 2,723,751. Therefore, we estimate that burden will increase by 81,713 hours (2,723,751 borrowers multiplied by 1 interview per borrower multiplied by 0.03 additional hours per interview).

We estimate that, for all institutions, the additional entrance counseling requirements will add 1 hour of burden per institution to incorporate new material into their counseling and implement new counseling procedures. Of the 5,847 institutions that are required to perform entrance counseling, 1,933 are public

institutions, 1,750 are private, not-for-profit institutions, and 2,164 are proprietary institutions. For the 1,933 public institutions, we estimate that burden will increase by 1,933 hours (1,933 institutions multiplied by 1 hour). For the 1,750 private, not-for-profit institutions, we estimate that burden will increase by 1,750 hours (1,750 institutions multiplied by 1 hour). Of the 2,164 proprietary institutions, we estimate that burden will increase by 2,164 hours (2,164 institutions multiplied by 1 hour). Collectively, we estimate that the total burden created for institutions of higher education to provide the added entrance counseling is 5,847 hours (1,933 hours + 1,750 hours + 2,164 hours).

We estimate that each exit counseling interview will take an additional 3 minutes (0.05 hours) per borrower to complete and estimated that 2,699,275 borrowers took exit counseling in the most recently completed award year. Therefore, we estimate that burden will increase by 134,964 hours (2,699,275 borrowers multiplied by 1 interview per borrower multiplied by 0.05 additional hours per interview).

Of the 5,847 institutions, 1,933 are public institutions, 1,750 are private, not-for-profit institutions, and 2,164 are proprietary institutions. We estimate that, for all institutions, the additional exit counseling requirements will add 1.5 hours of burden per institution to incorporate new material into their counseling and implement new counseling procedures. For the 1,933 public institutions, we estimate that burden will increase by 2,900 hours (1,933 institutions multiplied by 1.5 hours). For the 1,750 private, not-for-profit institutions, we estimate that burden will increase by 2,625 hours (1,750 institutions multiplied by 1.5 hours). Of the 2,164 proprietary institutions, we estimate that burden will increase by 3,246 hours (2,164 institutions multiplied by 1.5 hours). The total burden created for institutions of higher education to provide the added exit counseling is 8,771 hours (2,900 hours + 2,625 hours + 3,246 hours).

Collectively, under 1845–NEW1 the new entrance and exit counseling regulatory requirements in section 685.304, will add 231,295 hours ([81,713 + 134,964 for borrowers] + [5,847 + 8,771 hours for institutions]) of additional burden on institutions and borrowers.

Consistent with the discussion in this section, the following chart describes the sections of the interim final regulations involving information collections, the information being

collected, and the collections that the Department is submitting to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The

monetized net costs of the additional burden on institutions and borrowers using wage data developed using BLS data, available at <http://www.bls.gov/ncs/ect/sp/ecsuhst.pdf>, is \$5,472,356

as shown in the chart below. This cost was based on an hourly rate of \$24.61 for institutions and \$17.88 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated change in the burden	Estimated cost
§ 685.301(e) .....	The new regulations require institutions to provide program information to the Department's COD System so that the Department can determine whether and to what extent borrowers continue to have Direct Subsidized Loan eligibility under § 685.200(f).	OMB 1845-NEW1 .....	\$1,141,584
§ 685.309(b) .....	The new regulations require institutions to provide program information to NSLDS so that the Department can determine whether borrowers subject to § 685.200(f) with Direct Subsidized Loans have become responsible for accruing interest based on their enrollment.	The burden will increase by 46,387 hours on institutions. OMB 1845-NEW1 .....	123,838
§ 685.304 .....	The new regulations require institutions to provide additional entrance and exit counseling to borrowers so that they are adequately informed of the terms and conditions of their loans and understand the consequences of § 685.200(f).	The burden will increase by 5,032 hours on institutions. OMB 1845-NEW1.	
Total Change in Burden .....	.....	The burden will increase by 216,677 hours on borrowers. The burden will increase by 14,618 hours on institutions. The burden will increase be a total of 231,294 hours. Total increase in burden on borrowers under part 685 is 216,677 hours. Total increase in burden on institutions under part 685 is 66,037. Total increase in burden under part 685 is 282,714 hours.	3,847,185 for borrowers. 359,749 for institutions. 4,206,934 total. 3,847,185 for borrowers. 1,625,171 for institutions. 5,472,356 total.

*Intergovernmental Review*

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

*Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the United States gathers or makes available.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Direct Loan Program)

**List of Subjects in 34 CFR Part 685**

Colleges and universities, Education, Loan programs—education, Student aid.

Dated: May 10, 2013.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends part 685 of title 34 of the Code of Federal Regulations as follows:

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

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

**Authority:** 20 U.S.C 1070g, 1087a, *et seq.*, unless otherwise noted.

- 2. Section 685.200 is amended by:
  - A. Revising paragraph (a)(2)(i) and the introductory text in paragraph (a)(2)(ii).
  - B. Adding a new paragraph (f).

The revisions and addition read as follows:

**§ 685.200 Borrower eligibility.**

(a) \* \* \*

(2)(i) A Direct Subsidized Loan borrower must—

(A) Demonstrate financial need in accordance with title IV, part F of the Act; and

(B) In the case of a first-time borrower as defined in paragraph (f)(1)(i) of this section, not have met or exceeded the limitations on the receipt of Direct Subsidized Loans described in paragraph (f) of this section.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need as that term is used in paragraph (a)(2)(i)(A) of this section if that organization—

\* \* \* \* \*

(f) *Limitations on eligibility for Direct Subsidized Loans and borrower responsibility for accruing interest for first-time borrowers on or after July 1, 2013.* (1) *Definitions.* The following definitions apply to this paragraph:

(i) *First-time borrower* means an individual who has no outstanding balance of principal or interest on a Direct Loan Program or FFEL Program loan on July 1, 2013, or on the date the borrower obtains a Direct Loan Program loan after July 1, 2013.

(ii) *Maximum eligibility period* is a period of time, measured in academic years, equal to 150 percent of the length of the educational program, as published by the institution, in which the borrower is currently enrolled.

(iii) *Subsidized usage period* is, except as provided in paragraph (f)(4) of this section, a period of time measured in academic years and rounded down to the nearest quarter of a year calculated as the—

Number of days in the borrower's loan period for a Direct Subsidized Loan

Number of days in the academic year for which the borrower receives the Direct Subsidized Loan

(iv) *Remaining eligibility period* is the difference, measured in academic years, between the borrower's maximum eligibility period and the sum of the borrower's subsidized usage periods, except as provided in paragraphs (f)(7)(ii) and (f)(7)(iii) of this section.

(2) *Loss of eligibility for Direct Subsidized Loans.* A first-time borrower is not eligible for additional Direct Subsidized Loans when the borrower has no remaining eligibility period. Such a borrower may still receive Direct Unsubsidized Loans for which the borrower is otherwise eligible.

(3) *Borrower responsibility for accruing interest.* (i) Notwithstanding any provision of this part that provides for the borrower to not be responsible

for accruing interest on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, and except as provided in paragraphs (f)(6)(v) and (f)(7)(iv) of this section, a first-time borrower becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan beginning on the date—

(A) The borrower has no remaining eligibility period; and

(B) The borrower attends any undergraduate program or preparatory coursework on at least a half-time basis at an eligible institution that participates in the title IV, HEA programs.

(ii) The borrower continues to be responsible for the interest that accrues on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan for which the borrower previously became responsible for accruing interest in accordance with paragraph (f)(3)(i) of this section.

(iii) For any loan for which the borrower becomes responsible for accruing interest in accordance with paragraph (f)(3)(i) of this section, the borrower is responsible for only the interest that accrues after the borrower meets the criteria in paragraph (f)(3)(i) of this section and unpaid interest is capitalized in the same manner as for a Direct Unsubsidized Loan.

(iv) A borrower who completes an undergraduate program and who has not become responsible for accruing interest on Direct Subsidized Loans as a result of attendance in that program does not become responsible for accruing interest under paragraph (f)(3)(i) of this section on any Direct Subsidized Loans received for attendance in any program prior to completing that undergraduate program and for which the borrower has not previously become responsible for accruing interest, regardless of subsequent attendance in any other program.

(4) *Exceptions to the calculation of subsidized usage periods.* (i) For a first-time borrower who receives a Direct Subsidized Loan in an amount that is equal to the annual loan limit for a loan period that is less than a full academic year in length, the subsidized usage period is one year.

(ii) Except as provided in paragraph (f)(4)(i) of this section, for a first-time borrower who is enrolled on a half-time or three-quarter-time basis, the borrower's prorated subsidized usage period is calculated by multiplying the borrower's subsidized usage period by 0.5 or 0.75, respectively.

(5) *Subsequent attendance in programs of greater duration.* A first-time borrower who subsequently attends a program that is longer than the program the borrower previously attended—

(i) Is eligible for a Direct Subsidized Loan if the borrower's remaining eligibility period is greater than zero; and

(ii) Regains eligibility for Direct Subsidized Loans if the borrower previously lost eligibility for Direct Subsidized Loans in accordance with paragraph (f)(2) of this section.

(6) *Treatment of preparatory coursework.* For first-time borrowers who receive a Direct Subsidized Loan under 34 CFR 668.32(a)(1)(ii) who are enrolled for no longer than one 12-month period in a course of study necessary for enrollment in an eligible program—

(i) Direct Subsidized Loans received for such preparatory coursework are included in the calculation of the borrower's subsidized usage period;

(ii) The maximum eligibility period for preparatory coursework necessary for enrollment in an undergraduate program is the maximum eligibility period for the undergraduate program for which the preparatory coursework is required;

(iii) The maximum eligibility period for preparatory coursework necessary for enrollment in a graduate or professional program is the maximum eligibility period for the undergraduate program for which the borrower most recently received a Direct Subsidized Loan;

(iv) For enrollment in preparatory coursework necessary for enrollment in an undergraduate program, the borrower becomes responsible for accruing interest as described in paragraph (f)(3) of this section only if the borrower has no remaining eligibility period in the program for which the coursework is required; and

(v) Enrollment in preparatory coursework necessary for enrollment in a graduate or professional program does not result in a borrower becoming responsible for accruing interest as described in paragraph (f)(3) of this section.

(7) *Treatment of teacher certification programs for which an institution does not award an academic credential.* For first-time borrowers who receive a Direct Subsidized Loan under 34 CFR 668.32(a)(1)(iii) who are enrolled at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in



that State but for which the institution awards no academic credential—

(i) The borrower's maximum eligibility period for Direct Subsidized Loans is a period of time equal to 150 percent of the length of the teacher certification program, as published by the institution, in which the borrower is currently enrolled;

(ii) For purposes of determining a borrower's remaining eligibility period for such teacher certification programs, only Direct Subsidized Loans the borrower received for enrollment in such programs are included in the borrower's subsidized usage period;

(iii) For purposes of determining a borrower's remaining eligibility period for programs other than a teacher certification program for which an institution does not award an academic credential, any Direct Subsidized Loans that the borrower received for enrollment in such a teacher certification program are not included in a borrower's subsidized usage period; and

(iv) Enrollment in such a teacher certification program does not result in a borrower becoming responsible for accruing interest on any Direct Subsidized Loan under paragraph (f)(3) of this section.

**§ 685.202 [Amended]**

■ 3. Section 685.202 is amended, in paragraph (a)(1)(v)(E), by removing the date "2012" and adding, in its place, the date "1, 2013".

■ 4. Section 685.304 is amended by:

■ A. In paragraph (a)(6)(xi), removing the word "and" that appears after the punctuation ";;".

■ B. In paragraph (a)(6)(xii), removing the punctuation "." and adding, in its place, the punctuation and word ";; and".

■ C. Adding paragraph (a)(6)(xiii).

■ D. Redesignating paragraphs (b)(4)(xii) and (b)(4)(xiii) as paragraphs (b)(4)(xiii) and (b)(4)(xiv), respectively.

■ E. Adding a new paragraph (b)(4)(xii).

The additions read as follows:

**§ 685.304 Counseling borrowers.**

(a) \* \* \*

(6) \* \* \*

(xiii) For first-time borrowers as defined in § 685.200(f)(1)(i), explain the limitation on eligibility for Direct Subsidized Loans and possible borrower responsibility for accruing interest described in § 685.200(f), including—

(A) The possible loss of eligibility for additional Direct Subsidized Loans;

(B) How a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated;

(C) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans; and

(D) The impact of borrower responsibility for accruing interest on the borrower's total debt.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(xii) Explain to first-time borrowers, as defined in § 685.200(f)(1)(i)—

(A) How the borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are determined under § 685.200(f);

(B) The sum of the borrower's subsidized usage periods, as determined under § 685.200(f)(1)(iii), at the time of the exit counseling;

(C) The consequences of continued borrowing or enrollment, including—

(1) The possible loss of eligibility for additional Direct Subsidized Loans; and

(2) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans;

(D) The impact of the borrower becoming responsible for accruing interest on total student debt;

(E) That the Secretary will inform the student borrower of whether he or she is responsible for accruing interest on his or her Direct Subsidized Loans; and

(F) That the borrower can access NSLDS to determine whether he or she is responsible for accruing interest on any Direct Subsidized Loans as provided in § 685.200(f)(3);

\* \* \* \* \*

[FR Doc. 2013-11515 Filed 5-15-13; 8:45 am]

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