

That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The safety zone provides safety for the public while the Highway 661 Swing Bridge is being refurbished. This rule is categorically excluded from further review under paragraph (34)-(g.) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be made available as indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. A new temporary § 165.T08-0880 is added to read as follows:

**§ 165.T08-0880 Safety Zone; Houma Navigation Canal, from Mile Marker 35.5 to 36.5, and Gulf Intracoastal Waterway, from Mile Marker 59.0 to 60.0, West of Harvey Locks, bank to bank; Houma, Terrebonne Parish, LA.**

(a) *Location.* The following area is a safety zone: All waters of the Houma Navigation Canal, from Mile Marker 35.5 to 36.5, and in the *Gulf Intracoastal Waterway*, from Mile Marker 59.0 to

60.0, West of Harvey Locks, bank to bank, Houma, Terrebonne Parish, LA.

(b) *Effective date.* This rule is effective January 17, 2014 through July 1, 2014. For purposes of enforcement, actual notice has been used from December 13, 2013.

(c) *Periods of enforcement.* This rule will be enforced with actual notice beginning on December 13, 2013 through July 1, 2014. The Captain of the Port (COTP) Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement periods for the safety zone as well as any scheduled times for changes in the planned schedule.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Morgan City or a designated representative.

(2) Vessels requiring entry into or transit through the safety zone must request permission from the COTP Morgan City, or a designated representative. As a designated representative, the DOT 661 swing bridge operator may be contacted on VHF Channel 13 or 71.

(3) Mariners should contact the DOT 661 swing bridge operator prior to arrival at the safety zone for permission to enter or transit through the safety zone.

(4) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Morgan City or a designated representative and pass at slowest safe speed to minimize wake.

(5) While the safety zone is in effect, there will be restricted clearance for marine traffic on the Houma Navigation Canal, from Mile Marker 35.5 to 36.5 from 6:30 a.m. to 11:30 a.m. and 1:00 p.m. to 6:00 p.m., seven days a week. To minimize waterway impact, this area will be open without restriction to marine traffic from 6:00 p.m. to 6:30 a.m. and from 11:30 a.m. to 1:00 p.m. or until traffic clears, seven days a week.

(6) All persons and vessels shall comply with the instructions of the COTP Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(e) *Informational broadcasts.* The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement periods for the safety zone as well as any changes in the planned schedule.

Dated: December 13, 2013.

**D.G. McClellan,**

*Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 685

**RIN 1840-AD13**

**[Docket ID ED-2013-OPE-0066]**

#### **William D. Ford Federal Direct Loan Program**

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

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the William D. Ford Federal Direct Loan Program (Direct Loan Program) regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from the Moving Ahead for Progress in the 21st Century Act (MAP-21). These final regulations reflect the provisions of the HEA, as amended by MAP-21.

**DATES:** Effective March 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Nathan Arnold, U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8084, Washington, DC 20006-8542. Telephone: (202) 219-7134.

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:** On May 16, 2013, the Secretary published interim final regulations (IFR) in the **Federal Register** (78 FR 28954), implementing provisions of the HEA, as amended by MAP-21 (Pub. L. 112-141).

In the IFR, the Secretary—

- Provided 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.
- Established new Direct Loan Program regulations that provide that a first-time 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.

- Established new Direct Loan Program regulations that provide that first-time borrowers who are ineligible for Direct Subsidized Loans as a result of these provisions and who 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 future periods, beginning on the date of the triggering enrollment, unless the student completes his or her prior program of study and has not lost eligibility for Direct Subsidized Loans as a result of these provisions.

- Prorated periods of Direct Subsidized Loan receipt during part-time enrollment for purposes of the 150 percent limit on Direct Subsidized Loan eligibility.

- Established special rules for applying the 150 percent limit on Direct Subsidized Loan eligibility for borrowers enrolled in preparatory coursework required for enrollment in an undergraduate program, preparatory coursework required for enrollment in a graduate or professional program or 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.

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

The IFR was effective on the date of publication, May 16, 2013, and the Secretary requested public comment on those regulations.

*Summary of the Major Provisions of This Regulatory Action:* The final regulations—

- Modify the rule for rounding borrowers' subsidized usage periods to ensure that similarly situated borrowers have similar subsidized usage periods;
- Modify the calculation of the subsidized usage period for borrowers who are enrolled on a part-time basis for a period of less than a full academic year, but who receive a Direct Subsidized Loan in the amount of the full annual loan limit;
- Modify the calculation of the maximum eligibility period for two-year

baccalaureate degree programs that require an associate degree or at least two years of postsecondary coursework as a prerequisite for admission; and

- Modify the calculation of the maximum eligibility period for certain associate degree programs that have special admissions requirements.

Chart 1 summarizes the benefits, costs, and transfers stemming from the IFR and these final regulations, which are discussed in more detail in the *Regulatory Impact Analysis* section of this preamble. The Department estimates that approximately 62,000 borrowers in the 2013 loan cohort will be affected by the IFR and final regulations, with the number of borrowers affected increasing in each subsequent year's cohort to approximately 578,000 borrowers in the 2023 loan cohort. The benefits of the IFR and final regulations include incentives for borrowers to complete programs more quickly (which could lead to reduced loan balances) and lower payments for borrowers receiving Direct Subsidized Loans between July 1, 2012, and June 30, 2013.

CHART 1—SUMMARY OF THE IFR AND FINAL REGULATIONS

Issue and key features	Benefits	Cost/transfers
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). Reduction of interest rate on Direct Subsidized Loans to 3.4 percent after July 1, 2011, and before July 1, 2013.	Reduced loan balance and lower payments for borrowers.	\$5.6 billion for loans disbursed on or after July 1, 2012 and before July 1, 2013.
Limitation on Direct Subsidized Loan eligibility for borrowers who receive such loans for a period that is equal to 150 percent of the published length of the educational program and borrower responsibility for accruing interest for enrollment after meeting or exceeding this limit.	Create incentives for students to complete academic programs in a timely manner and avoid incurring unnecessary loan debt.	Estimated net budget impact of -\$3.9 billion over the 2013–2023 loan cohorts.
Prorating periods of Direct Subsidized Loan receipt during part-time enrollment.	Account for differing enrollment levels to provide similar treatment to similarly situated borrowers.	
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.	Limit borrower responsibility for accruing interest to encourage completion.	
Special rule that specifies the calculation of the maximum eligibility period for certain two-year baccalaureate degree and selective admission associate degree programs.	Provides for more accurate calculation of program length and borrower eligibility.	
Modified entrance- and exit-counseling requirements to provide borrowers with information regarding the 150 percent limit on Direct Subsidized Loans.	Provide borrowers with information on eligibility limitations and potential responsibility for accruing interest.	Estimated cost of \$5.21 million in increased burden to institutions and borrowers and other paperwork compliance costs.

**Analysis of Comments and Changes**

The changes to the IFR included in these final regulations were developed through the analysis of comments received on the IFR published on May 16, 2013. In response to the Secretary's

invitation, 14 parties submitted comments on the IFR.

An analysis of the comments submitted in response to the IFR and the changes we are making in these final regulations follows. We group major issues according to subject, with

appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. We also do not respond to

comments pertaining to issues that were not within the scope of the IFR.

### General Comments

*Comments:* A commenter noted support for the Department's efforts to encourage students to complete educational programs in a timely manner and to limit unnecessary borrowing.

A commenter expressed appreciation for the Department seeking public comment on the IFR, even though Congress waived the negotiated rulemaking requirement.

A commenter expressed appreciation for the Department's efforts to assume responsibility for tracking and notification of eligibility determinations and loss of interest subsidy.

*Discussion:* The Department thanks the commenters for their support.

*Changes:* None.

*Comment:* A commenter suggested that the interchangeable use of the terms "enroll" and "attend" in the preamble and throughout the IFR is misleading. The commenter noted that "enrolled," as defined in 34 CFR 668.2, means the status of a student who has completed registration requirements or, in the case of a student in a program offered predominantly by correspondence, has submitted one lesson. The commenter believed that the intent of the IFR was to apply the loss of interest subsidy based on actual attendance at an institution of higher education, not enrollment. The commenter recommended that we replace the term "enrolled" with the term "attend" and its variations throughout § 685.200(f).

*Discussion:* The commenter is correct that a borrower loses the interest subsidy when a borrower has reached the 150 percent limit and then "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," as provided in § 685.200(f)(3)(i)(B). The term "attend" or its variant (i.e. "attends") is used when necessary to specify that a borrower must actually attend the program rather than simply enroll (e.g., § 685.200(f)(3)(iv) and § 685.200(f)(5)). We use the term "attend" when describing how borrowers may lose interest subsidy to specify that a borrower may only lose interest subsidy in certain circumstances after attendance, and that enrollment is not sufficient to cause the loss of interest subsidy. We therefore do not believe that use of the term "enroll" or its variant in § 685.200(f) is incorrect or will result in any confusion.

*Changes:* None.

### First-Time Borrower (§ 685.200(f)(1)(i))

*Comments:* A commenter asked whether a borrower is considered a first-time borrower under § 685.200(f)(1)(i) regardless of whether existing loans were repaid in full before or after July 1, 2013, so long as the borrower does not receive the Direct Subsidized Loan until after the loans are repaid.

The commenter also asked whether a borrower who owed a loan balance prior to July 1, 2013, who then borrows a new Direct Loan after July 1, 2013, and then pays off all loans in full is considered a first-time borrower.

*Discussion:* Section 685.200(f)(1)(i) defines a first-time borrower for purposes of the 150 percent Direct Subsidized Loan limit as "an individual who has no outstanding balance of principal or interest on a Direct Loan Program or Federal Family Education Loan (FFEL) Program loan on July 1, 2013 or on the date the borrower obtains a Direct Loan Program loan after July 1, 2013." If a borrower does not owe a balance on a Direct Loan or a FFEL Program loan at the time he or she receives a Direct Subsidized Loan on or after July 1, 2013, the borrower is considered a first-time borrower.

In the first circumstance described by the commenter, it is of no practical consequence whether a borrower pays off the balance of his or her Direct Subsidized Loans before or after July 1, 2013, before receiving a new Direct Subsidized Loan. In both cases, the borrower will not have a Direct Loan or FFEL program loan balance when the borrower receives his or her Direct Subsidized Loan on or after July 1, 2013. Therefore, in both cases, the borrower is a first-time borrower under the terms of § 685.200(f)(1)(i).

In the second circumstance described by the commenter, when the borrower receives his or her Direct Subsidized Loan after July 1, 2013, the borrower does owe a balance on a Direct Loan or a FFEL Program Loan. Therefore, at that point in time, the borrower would not be considered a first-time borrower. If the borrower subsequently pays off the balance of his or her loans and then borrows a new Direct Subsidized Loan, the borrower would then be considered a first-time borrower.

*Changes:* None.

### Maximum Eligibility Period (§ 685.200(f)(1)(ii))

*Comments:* Two commenters stated that they believed that the definition of the term "maximum eligibility period" in § 685.200(f)(1)(ii) is inconsistent with the provisions of MAP-21. These commenters argued that under MAP-21,

a transfer student's aggregate period of enrollment should be calculated based on the "longest educational program in which the borrower" is or was enrolled. The commenters believed that calculating the maximum eligibility period based on the borrower's current educational program disadvantages borrowers who transfer from a longer program to a shorter program ("reverse transfer students").

One commenter noted that the satisfactory academic progress regulations in 34 CFR 668.34 specify that the pace at which a student progresses through his or her educational program must ensure that the student completes the program within the maximum timeframe for that program. The definition of the term "maximum timeframe" in 34 CFR 668.34(b) specifies that, for undergraduate programs, the maximum timeframe is "no longer than 150 percent of the published length of the educational program." The commenter recommended that, to make it easier for financial aid administrators to understand § 685.200(f), the Department should use the maximum timeframe standard in 34 CFR 668.34(b) for purposes of determining the borrowers' Direct Subsidized Loan eligibility, rather than using the maximum eligibility period in § 685.200(f)(1)(ii).

Two commenters recommended that the definition of "maximum eligibility period" mirror the Pell Grant Lifetime Eligibility Used (LEU) limit, which limits a student's receipt of Pell Grants to 12 semesters or an equivalent period.

*Discussion:* In defining the term "maximum eligibility period," consistent with section 455(q)(1) of the HEA, as added by MAP-21, we sought to treat similarly situated borrowers in a similar manner. As we stated in the preamble to the IFR, "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." 78 FR at 28960. The suggestion to base Direct Subsidized Loan eligibility on the longest program in which the borrower had ever enrolled would result in maximum eligibility periods dependent in part on whether a particular borrower previously enrolled in a program of a longer or shorter duration for which he or she received Direct Subsidized Loans. The commenter's approach would introduce a method of calculating remaining eligibility periods contrary to statutory intent because it would use a standard that is unrelated to a borrower's timely completion of a program. It would also

introduce significant inconsistencies between borrowers with different postsecondary enrollment histories.

Section 455(q)(1) of the HEA provides that the calculation of the 150 percent limit is based on the published length of the borrower's educational program and the period of time for which the borrower received Direct Subsidized Loans. The statute does not mention satisfactory academic progress or related measurements or the Pell Grant LEU measurement. Those standards do not reflect section 455(q)(1) of the HEA. Therefore, the Secretary is not adopting those standards for purposes of calculating the 150 percent limit.

*Changes:* None.

*Comments:* Two commenters noted that an educational program's published length is not always a direct reflection of the program's degree level. Many institutions offer degree completion programs designed to allow students to matriculate into a bachelor's degree program with transfer credits counting toward the bachelor's degree. Since enrollment in these programs requires transfer credits, and the institution offers the program in such a way as to only offer "upper-division coursework," a degree-completion program at the baccalaureate level is often two years in length with a maximum eligibility period of three years. One of the commenters recommended that instead, the maximum eligibility period should be calculated using a minimum program length based on credential level, rather than the published length of the program.

A commenter also noted that there are certain associate degree programs that are similar to the baccalaureate degree programs addressed in the preceding paragraphs. These are programs, often at community colleges, that confer a two-year associate degree in a specialized field, but which are offered at institutions that do not offer a four-year baccalaureate degree. As a prerequisite to admission into the associate degree program, students generally must complete at least two-years of general education coursework. Afterward, the two-year associate degree program provides the necessary "upper-division" or "specialized" coursework, which is often practical or clinical in nature. These programs generally lead to State licensure in occupations that are fundamentally similar to programs offering these specializations at the four-year bachelor's degree level.

*Discussion:* We agree with the comments suggesting we revise § 685.200(f) because, under the IFR, borrowers in baccalaureate degree completion programs would be treated

differently than borrowers enrolled in full programs of equivalent degree levels.

For example, imagine two borrowers, one enrolled in a program with a published length of four years and the other initially enrolled in a program with a published length of two years before going on to complete a two-year bachelor's degree at another institution in a program that only offers the upper-division coursework required to receive the bachelor's degree. The first borrower would have a maximum eligibility period of six years to complete the bachelor's degree program. The second borrower would have a maximum eligibility period of three years because each of the programs in which the borrower is enrolled has a published length of two years, and loans previously received will continue to count in the second program. The effect of this treatment is that, under the IFR, the second borrower has only three years of eligibility for Direct Subsidized Loans, while the first borrower has six years of eligibility despite being enrolled in a program with an equivalent degree and effectively equivalent program length. We believe this result is contrary to the intent of the statute.

To ensure that borrowers' maximum eligibility periods are calculated consistent with the statutory intent, we have revised § 685.200(f) to specify that certain two-year programs that meet specific criteria are, for purposes of determining a borrower's maximum eligibility period, considered bachelor's degree programs equivalent to those that are four years in duration. To be in this category, a two-year degree-completion program must be a bachelor's degree program that requires an associate degree or the successful completion of at least two years of postsecondary coursework from an eligible program as a prerequisite for admission. The successful completion of coursework means receiving academic credit for coursework that is deemed sufficient to meet admissions requirements as determined by the accepting institution.

Institutions which offer programs that meet the requirements of this provision would report a program length of four years for those programs to the Department for a maximum eligibility period of six years.

We also agree with the commenter that there are certain associate degree programs that are similar to these bachelor's degree programs. Under the IFR, borrowers attending these programs would have limited maximum eligibility periods for the same reasons as borrowers in bachelor's degree-

completion programs; even completing the program on time could result in the borrower's loss of eligibility for further Direct Subsidized Loans. We do not believe that these consequences for borrowers who complete these programs on time are consistent with the statutory intent of MAP-21. We have therefore revised § 685.200(f) to provide that these programs will be considered to have a program length of four years.

Applying this provision broadly to attendance in any subsequent associate degree program or to multiple, unrelated associate degree programs would be contrary to the statutory intent of encouraging students to complete their programs in a timely manner. Selective-admissions associate degree programs, by contrast, only admit individuals who have completed prerequisite coursework and are analogous to longer baccalaureate degree programs. Therefore, we will apply this provision narrowly to associate degree programs that are designed specifically to confer a more specialized credential after completion of two years of postsecondary coursework and which are, for practical purposes, equivalent in length to a baccalaureate degree program.

To ensure that these provisions are implemented in a manner consistent with the goals of the statute, the special treatment for selective-admissions associate degree programs applies only to programs that meet certain criteria. To be treated as a four-year program for purposes of the maximum eligibility period calculation, a two-year associate degree program must require, as a prerequisite to admission, that the student have successfully completed an associate degree or at least two years of postsecondary coursework in an eligible program. Furthermore, the program must be a selective admission program, which means that the program is not an "open admission" program, and admits students based on competitive criteria. These criteria may include, but are not limited to, entrance exam scores, class rank, grade point average, written essays, or recommendation letters. Finally, these programs must provide the academic qualifications necessary for a profession that requires licensure or a certification by the State in which the program is offered. Typically, a baccalaureate degree is required in order to obtain the licensure or certification that the selective-admission associate degree program leads to, and this requirement would ensure that programs qualifying for this provision are comparable to four-year baccalaureate degree programs. Examples of programs that would likely

meet this criterion are registered nursing programs or physical therapy programs. Students in these selective-admission associate degree programs are eligible for Direct Subsidized Loans at the annual loan limit related to an associate degree program (*i.e.*, loan limits that do not exceed the second-year level under 34 CFR 685.203(a)(1)(i)–(a)(2)(i)).

It should also be noted that § 685.200(f)(8) does not confer title IV program eligibility on programs that are otherwise ineligible to participate in those programs. Programs seeking to qualify for the special rule provided under this regulation must meet and comply with all other statutory and regulatory requirements to award Federal student aid.

To ensure compliance with the requirements of this regulation, during the Department's program compliance reviews we will evaluate whether an institution with selective admission associate degree programs which have certified that they meet the requirements under this regulation do satisfy those requirements. If we determine that the institution did not qualify for the special rule provided in this regulation, the institution will not be permitted to report a program length of four years for that program and must instead report a program length of two years. However, students who were previously enrolled in such a program will not lose interest subsidy retroactively as a result of such a determination or required to return the loan proceeds under § 685.211(e).

*Changes:* We have added a new § 685.200(f)(8) to provide special treatment for certain baccalaureate degree-completion programs and selective-admission associate degree programs. The new provisions allow such programs to report a program length of four years consistent with the preceding discussion.

*Comments:* A commenter asked how a combination bachelor's and master's degree (BA/MA) program or other dual-degree programs are treated for purposes of maximum eligibility period calculations.

*Discussion:* Consistent with the Department's longstanding guidance related to when students in combination BA/MA or other dual degree programs transition from undergraduate status to graduate/professional status (see, e.g., 2012–2013 FSA Handbook, Volume 1, Page 67 and Volume 3, Page 96), an institution with a combination undergraduate/graduate or professional degree program must report program information, including credential level and program length, for the portion of the program during which the student is

considered to be an undergraduate student and, therefore, eligible for a Direct Subsidized Loan. For example, if the institution offers a five-year BA/MA program, and the borrower is treated as an undergraduate student during the first four years of the program and receives Direct Subsidized Loans, the institution must report that the student is enrolled in a four-year baccalaureate degree program.

For the duration of the student's enrollment in the program as an undergraduate student, the institution must report the program's credential level to the Common Origination and Disbursement (COD) System and the National Student Loan Data System (NSLDS) as a bachelor's degree program. Upon the student's receipt of a Direct Unsubsidized Loan for the master's degree portion of the program, the institution must report the student's enrollment as a graduate student to both NSLDS and the COD system.

*Changes:* None.

#### **Subsidized Usage Period (§ 685.200(f)(1)(iii))**

*Comments:* One commenter stated that the IFR is unclear as to the meaning of academic year. The commenter asked if the term “academic year” in § 685.200(f)(1)(iii) means the period defined in 34 CFR 668.3, and suggested that the preamble to the IFR and subsequent guidance provided by the Department appears to use the term “academic year” to refer to both the title IV academic year and to the academic year for annual loan limit purposes. The commenter stated that it is not clear what period of time the Department intends to use in the denominator when calculating the subsidized usage period, and recommended that the Department clarify the regulation.

Another commenter stated that the combination of using calendar days in the calculation of the usage period and rounding down to the nearest quarter of a year could result in inequitable treatment of borrowers who are enrolled in similar programs that use slightly different academic calendars. While the commenter appreciated that rounding down preserves as much borrower eligibility as possible, the commenter also felt that rounding down would lead to inequitable results for similarly situated borrowers.

Two commenters asked if it is possible that a subsidized usage period calculation could be rounded down to zero.

*Discussion:* We agree with the commenter who emphasized the importance of drawing a clear distinction between the use of the term

“academic year” as defined in 34 CFR 668.3 and the use of the same term for annual loan limit purposes. We have revised § 685.200(f)(1)(iii) to clarify that the calculation of a subsidized usage period is based on the length of the academic year for annual loan limit purposes (which includes, for example, breaks between terms).

We agree with the commenters who identified an unintended consequence of the rounding rules in § 685.200(f)(1)(iii). Because the calculation of a subsidized usage period includes all calendar days of the academic year for annual loan limit purposes (e.g., including breaks between terms), under the IFR it would have been possible for borrowers who received a loan for a single term of an academic year to have had a subsidized usage period that is less than the ratio of the number of terms in the academic year for which the borrower receives a Direct Subsidized Loan to the number of total terms in the academic year.

In creating a rounding rule, we intended to make the subsidized usage period both easier to understand and a round number that would make it more likely that the borrower could utilize his or her remaining eligibility. We believe that these are still important considerations; however, we also believe it is important to ensure that borrowers who are in a similar situation are treated in a similar manner. Accordingly, we have revised the regulations to provide for rounding a borrower's subsidized usage period either up or down (as appropriate) to the nearest tenth of a year, rather than down (and not up) to the nearest quarter of a year.

This approach reduces the likelihood that similarly situated borrowers will have significantly divergent subsidized usage periods. We believe that continuing to round borrowers' subsidized usage periods will make remaining eligibility periods easier to understand and will make it more likely that borrowers have a remaining eligibility period that can be used to borrow an additional Direct Subsidized Loan.

The approach to rounding in the final regulations will eliminate the possibility that a borrower's subsidized usage period could be rounded to zero. Section 685.301(a)(10) specifies that for standard term programs and certain nonstandard term programs, the minimum permissible length of a loan period is a term, or, for non-term and certain nonstandard term programs, the lesser of the length of a program or an academic year. It would not be possible for a term to have a sufficiently short

length to result in an unrounded subsidized usage period of 0.04 or less, and because 34 CFR 668.8 requires that the minimum length of a non-term or nonstandard term program is at least 10 weeks, a subsidized usage period of 0.04 or less is also impossible in that context. Therefore, under the final regulation, a borrower's subsidized usage period will not be rounded down to zero.

*Changes:* We have revised § 685.200(f)(1)(iii) to specify that the term "academic year" as used to calculate a subsidized usage period is an academic year for annual loan limit purposes.

We have also revised § 685.200(f)(1)(iii) to specify that a subsidized usage period is rounded up or down to the nearest tenth of a year.

*Comments:* A commenter asked how the Department will ensure the accurate calculation of subsidized usage periods during award year 2013–2014 if three-quarter time enrollment status reporting is not required until award year 2014–2015.

*Discussion:* Section 685.200(f)(4)(ii) provides that borrowers enrolled on a half-time and three-quarter-time basis will have their subsidized usage periods prorated by 0.5 and 0.75, respectively. As we make the operational changes necessary to implement the regulations, we will require reporting of three-quarter-time enrollment for the 2014–2015 award year. Although the regulations are effective in award year 2013–2014, due to rules governing minimum loan period length (discussed in detail in the preamble to the IFR), borrowers will not lose Direct Subsidized Loan eligibility or interest subsidy until award year 2014–2015. However, calculations involving part-time enrollment that occur prior to the 2014–2015 award year could affect a borrower's overall Direct Subsidized Loan eligibility. We will not require retrospective reporting of additional enrollment status indicators for the 2013–2014 award year; instead, subsidized usage periods for 2013–2014 Direct Subsidized Loans will be prorated on the basis of half-time enrollment if, for any portion of the loan's loan period, the enrollment status reported to NSLDS is at least half-time, but less than full-time. For more information on this topic, please refer to "150% Direct Subsidized Loan Limit Electronic Announcement #3", posted to the Information for Financial Aid Professionals (IFAP) Web site on August 30, 2013, at <http://ifap.ed.gov/eannouncements/083013150DSLLEA3.html>.

*Changes:* None.

*Comments:* A commenter asked how situations in which a student is enrolled in a program for a very short period of time (i.e., two-week seminars or less) are treated for purposes of subsidized usage period calculations. The commenter also asked whether the answer is different if those enrollment periods are attached to the beginning or ending of a standard term.

*Discussion:* Standalone periods of enrollment in very short programs have no effect on a borrower's subsidized usage period because the minimum length of an eligible program (for Direct Loan purposes) is 10 weeks, under 34 CFR 668.8(d)(3)(i). Therefore, institutions cannot originate a Direct Subsidized Loan to borrowers in such a program. In cases where a short period of enrollment in coursework is attached to the beginning or end of a term, that period would be reported as part of the loan period or academic year to COD, and would affect that borrower's subsidized usage period according to the extent that the borrower's loan period and academic year were lengthened as a result of those days of enrollment being included in the calculation of the subsidized usage period.

*Changes:* None.

*Comments:* A commenter noted that Dear Colleague Letter GEN 13–13 (<http://www.ifap.ed.gov/dpccletters/GEN1313.html>) states that if any portion of a Direct Subsidized Loan is retained by the institution after the Return to Title IV (R2T4) calculation, that loan period counts towards a borrower's subsidized usage period. The commenter asked whether institutions or students are permitted to return that portion of the loan to avoid this consequence.

*Discussion:* Under the HEA and the Department's regulations, institutions may cancel all or a portion of a loan within 120 days of disbursement at the request of the borrower. Unless the student requests cancellation within that timeframe or the institution is otherwise legally obligated to cancel all or a portion of the loan, a institution may not return, nor may a borrower repay or cancel, loan funds for the purpose of reducing or eliminating a subsidized usage period.

*Changes:* None.

*Comments:* A commenter asked how subsidized usage periods are prorated for borrowers with more than one enrollment status during a loan period.

*Discussion:* If a borrower has more than one enrollment status during a loan period, we will prorate the borrower's subsidized usage period based on the enrollment status reported at the time of

the loan disbursement for the relevant payment period. For example, if a borrower was enrolled half-time in the fall term and full-time in the spring term, we would apply a 0.5 proration to the payment period covering the fall term so that the subsidized usage period for that term would be 0.25. There would be no proration for the payment period covering the spring term. Therefore, the borrower's subsidized usage period in this case would be calculated as 0.75 years and rounded to 0.8 years.

*Changes:* None.

### **Borrower Responsibility for Accruing Interest (§ 685.200(f)(3))**

*Comments:* One commenter recommended that the Department allow borrowers to regain the interest subsidy on their existing loans if they regain eligibility to receive additional Direct Subsidized Loans by transferring to a longer program. This commenter believed this would provide greater consistency among students with similar educational trajectories.

Another commenter supported the inclusion of § 685.200(f)(3)(i)(B), which limits a borrower's loss of the interest subsidy to attendance in those programs in which an otherwise-eligible borrower could receive a Direct Subsidized Loan. However, the commenter did not support the regulations which result in reverse transfer students losing the interest subsidy without receiving an additional Direct Subsidized Loan. As noted by the commenter, a borrower who transfers from a two-year program to a one-year certificate program will have a maximum eligibility period of 1.5 years in the one-year program. If that student received two years of Direct Subsidized Loans while in the two-year program, the student would lose eligibility for Direct Subsidized Loans and would lose the interest subsidy on outstanding Direct Subsidized Loans upon enrollment in the one-year program. The lower maximum eligibility period for the one year program results in the borrower having no remaining eligibility period (causing the loss of eligibility). The fact that the borrower is enrolled in an undergraduate program while having no remaining eligibility period results in the loss of the interest subsidy. The commenter believed that this approach penalizes a student who has chosen to continue education in what may, for that student, be a more appropriate program.

*Discussion:* The commenter's suggestion that the regulations should allow borrowers to regain lost interest subsidy is not consistent with section

455(q) of the HEA. The statute specifies that when the interest subsidy is lost, interest shall accrue and be paid or capitalized in the same manner as on a Direct Unsubsidized Loan. It does not permit the borrower to regain the interest subsidy.

With respect to the commenter's request to limit the loss of the interest subsidy so that borrowers who transfer to programs of shorter duration do not lose the interest subsidy, doing so would be inconsistent with the statute. Section 455(q) of the HEA requires that a borrower who exceeds the 150 percent limitation loses the interest subsidy on existing Direct Subsidized Loans. However, a consequence related to the commenter's concern is limited by § 685.200(f)(3)(iv), which provides that if a borrower completes his or her prior educational program before losing the interest subsidy, enrolling in a shorter program would not cause the borrower to lose interest subsidy.

*Changes:* None.

#### **Exceptions to the Calculation of Subsidized Usage Periods (§ 685.200(f)(4))**

*Comments:* One commenter expressed concerns about how § 685.200(f)(4)(i) affects borrowers who are enrolled for different periods within an academic year or over multiple academic years. The commenter provided an example in which an institution has a one-year program comprised of four quarters and two entering cohorts: Cohort A and cohort B. Cohort A begins attendance in the program in the fourth quarter of year 1. Because the costs of the program are sufficiently high, cohort A borrowers receive Direct Subsidized Loans in the amount of the annual loan limit for a single term, and have a subsidized usage period of one year under § 685.200(f)(4)(i). Because the program has a maximum eligibility period of 1.5 years, when cohort A continues enrollment in the remainder of the program in year 2, these borrowers would have a remaining eligibility period of 0.5 years and, after exhausting that remaining eligibility period, would lose the interest subsidy on all loans.

Cohort B begins attendance in the program in the first quarter of year 2. The costs also support borrowers in cohort B receiving Direct Subsidized

Loans in the amount of the annual loan limit, but for a period of the full academic year. Cohort B would therefore be able to start and finish the program in an academic year without losing eligibility for Direct Subsidized Loans or the interest subsidy on those loans. The commenter recommended revising § 685.200(f)(4)(i), or, as an alternative, allowing institutions to award less than the maximum eligible loan amount.

Another commenter agreed in general with the proration approach for part-time enrollment included in the IFR. However, this commenter noted that this approach produces different results depending on a borrower's enrollment patterns when the borrower receives a loan in the amount of the annual loan limit (see, e.g., examples 1 and 2 in the subsequent discussion section). The commenter believed that a borrower should not be disadvantaged because he or she demonstrated need for a loan in the amount of the full annual loan limit for less than a full year of attendance. The commenter believed that a borrower enrolled part-time should have a prorated subsidized usage period even if he or she received a Direct Subsidized Loan in the amount of the full annual loan limit for a period that is less than a full academic year.

*Discussion:* Under section 428G of the HEA, a borrower can receive a Direct Subsidized Loan in an amount equal to the full annual loan limit for a period that is less than a full academic year (e.g., a semester). As we explained in the preamble to the IFR, "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)." 78 FR at 28962.

With respect to the commenter's example illustrating concerns regarding the effect of this provision, if, due to program cost, a borrower receives in a single quarter a loan in the amount of the full annual loan limit for an entire academic year, then the borrower would have a subsidized usage period of one year. However, in the absence of

§ 685.200(f)(4)(i), the borrower in the commenter's example would be able to again receive the full annual loan limit at the beginning of the next academic year, and upon completion of the one-year program, would have received twice the amount of the full annual loan limit of Direct Subsidized Loan funds for the same program. We believe this is directly contrary to statutory intent. We believe that § 685.200(f)(4)(i) will effectively mitigate this problem. We do note that institutions are permitted to counsel borrowers on the amount of loan funds that may be advisable to accept and may refuse to originate loans on a case-by-case basis.

However, we agree with the other commenter's concerns regarding the interaction of the annual loan limit exception and the proration of subsidized usage periods for part-time borrowers under § 685.200(f)(4)(ii). Under the IFR, a part-time student who receives a loan in the amount of the annual loan limit for a period less than an academic year has a subsidized usage period of one year, notwithstanding the part-time enrollment. This framework results in differences in borrowers' subsidized usage periods that is disproportionate to their relative enrollment levels (see the discussion of examples 1 and 2 in the next paragraph). To mitigate this difference, the final regulations apply the annual loan limit provision of § 685.200(f)(4)(i), but also apply the proration of § 685.200(f)(4)(ii) based on the borrower's part-time enrollment status. The final regulations therefore minimize differing treatment of similarly situated borrowers while continuing to limit circumvention of the 150 percent limitation.

The following two examples illustrate the operation of the final regulations. (Note: these examples incorporate the revised rounding rule discussed earlier in the preamble to the final regulations.)

*Example 1:* Borrower A and Borrower B are both enrolled half-time and both enrolled in the fall term only. Borrower A receives a Direct Subsidized Loan in the amount of the annual loan limit and Borrower B receives a loan for less than the annual loan limit.<sup>1</sup>

<sup>1</sup> The unrounded subsidized usage period for Borrower B is approximately 0.24, resulting in a rounded subsidized usage period of 0.2.

SUBSIDIZED USAGE PERIOD

Borrowers	Received annual loan limit?	Enrollment status	Enrollment period	Existing rule (years)	Revised rule (years)
Borrower A .....	Yes .....	Half-time .....	Fall term only .....	1	0.5
Borrower B .....	No .....	Half-time .....	Fall term only .....	0.2	0.2

Under the IFR, when two half-time students are each receiving a Direct Subsidized Loan for a single term, the borrower who receives a loan in the amount of the annual loan limit has a subsidized usage period five times greater than the borrower who does not.

The final regulations continue to apply the annual loan limit exception to part time borrowers—limiting the

potential loophole by ensuring that such a borrower’s subsidized usage period reflects the amount of Direct Subsidized Loan funds that the borrower receives—but would also take into account the borrower’s less-than-full-time enrollment. As the example shows, the effect of this revised treatment is that Borrower A has a subsidized usage period of 0.5 years rather than one year

for receiving the full annual loan limit for a single term when enrolled half-time.

*Example 2:* Borrower C and Borrower D are both enrolled half-time and both receive a Direct Subsidized Loan in the amount of the annual loan limit. Borrower C receives a loan for the fall semester only and Borrower D receives a loan for both the fall and spring semesters (the full academic year).

SUBSIDIZED USAGE PERIOD

Borrowers	Received annual loan limit?	Enrollment status	Enrollment period	Existing rule (years)	Revised rule (years)
Borrower C .....	Yes .....	Half-time .....	Fall term only .....	1	0.5
Borrower D .....	Yes .....	Half-time .....	Fall and spring terms .....	0.5	0.5

Both borrowers receive a loan in the amount of the full annual loan limit. Under the IFR, however, Borrower C receives a loan for a shorter period and has a subsidized usage period that is twice as large as Borrower D, who receives an equivalent loan amount for a longer period.<sup>2</sup> The revision made in the final regulations results in both borrowers—who receive the same amount of money—receiving the same subsidized usage period.

*Changes:* We have removed the reference to the annual loan limit exception in § 685.200(f)(4)(ii).

*Comments:* A commenter expressed support for the part-time proration provisions in § 685.200(f)(4)(ii), but expressed concern about the subsidized usage period calculation in § 685.200(f)(1)(iii). The commenter stated that, under this provision, otherwise equivalent borrowers with differing academic calendars could have different subsidized usage periods. The commenter illustrated this argument with an example: Suppose two borrowers—one in a semester-based program and the other in a quarter-based program—both attend for 15 weeks of their program, and then both discontinue attendance after 15 weeks. The first borrower has a subsidized

usage period corresponding to half the year for attendance in one semester. However, the second borrower would have a higher subsidized usage period because that borrower’s loan period would extend to the end of the second quarter of the academic year, and therefore comprise a higher proportion of the academic year than for the borrower enrolled in a semester-based program. The commenter suggested that the calculation of the borrowers’ subsidized usage periods should be based on the borrower’s actual dates of attendance, rather than on the loan period.

*Discussion:* We believe that the changes to the rounding rules described in the “subsidized usage period” discussion in this preamble will minimize the differences in subsidized usage period calculations for generally comparable borrowers. However, a borrower who discontinues enrollment in the middle of a term or payment period received the benefit of the loan and, therefore, has a higher subsidized usage period, commensurate with that increased benefit. Under these regulations, borrowers accrue subsidized usage periods for terms or payment periods in which they receive and retain loan proceeds.

*Changes:* None.

*Comments:* A commenter asked how the annual loan limit provision in § 685.200(f)(4)(i) applies to a student’s final period of enrollment, where a student may receive the annual loan limit in a prorated amount.

*Discussion:* Section 685.200(f)(4)(i) applies only in the case where a borrower receives a loan in the amount of the full annual loan limit for a period of enrollment of less than an academic year. In the circumstance described by the commenter, where the borrower receives a prorated amount of the annual loan limit for enrollment in the final term of an academic program, the borrower has not received the full annual loan limit. Therefore, § 685.200(f)(4)(i) does not apply and the borrower’s subsidized usage period is calculated as described in § 685.200(f)(1)(iii).

*Changes:* To minimize confusion, we have revised § 685.200(f)(4)(i) to provide that only a Direct Subsidized Loan received in the amount of the “full” annual loan limit (as described in §§ 685.203(a)(1)(i), (a)(2)(i), (a)(3)(i), (a)(4), (a)(6)(i), and (a)(7)) causes a borrower to have a subsidized usage period of one year for a period of enrollment less than an academic year.

**Treatment of Preparatory Coursework (§ 685.200(f)(6))**

*Comments:* One commenter expressed support for the treatment of preparatory coursework in the IFR, but requested clarification that the regulation only limits loan receipt to twelve months, rather than prohibiting students from enrolling in preparatory coursework for a period greater than 12 months.

*Discussion:* The commenter is correct. The IFR did not create a limitation on the length of a student’s enrollment. The

<sup>2</sup> Borrower D has a subsidized usage period of 0.5 years under both the existing rule and the revised rule because § 685.200(f)(4)(i) applies to borrowers who receive the annual loan limit for a period of less than an academic year. Therefore, the proration rules for a part-time borrower apply under existing regulations for borrowers who receive the annual loan limit for the full academic year.



Department's regulations do not prevent students from enrolling in academic programs—the Department's regulations address the requirements related to the administration of the programs authorized under the HEA. A borrower may enroll in preparatory coursework for a period greater than 12 months to the extent permitted by the institution, but may not receive title IV aid for any period beyond 12 months.

*Changes:* None.

**Treatment of Teacher Certification Programs for Which an Institution Does Not Award an Academic Credential (§ 685.200(f)(7))**

*Comments:* One commenter expressed support for the treatment of non-credential teacher certification programs in the IFR.

*Discussion:* The Department appreciates the commenter's support.

*Changes:* None.

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

*Comments:* As discussed in the preamble to the IFR, institutions must report to the Department the Classification of Instructional Programs (CIP) Codes for their title IV eligible programs. Two commenters noted that the existing definition of the term "educational program" in 34 CFR 600.2 makes no reference to the subject matter covered by the educational program. These commenters believe that submission of CIP Codes is not needed for the implementation of the 150 percent requirements, and should not be required.

One commenter objected to the requirement that institutions report the CIP Code, credential level, and length of program to both NSLDS and the COD System. The commenter believed that requiring this information to be reported to both systems was unnecessary, because the Department could distribute the data internally, as needed.

Another commenter asserted that these regulations require reporting that is impractical for institutions with large enrollments. The commenter also stated that updating loan periods or academic year dates so frequently is not feasible without extraordinary manual intervention.

*Discussion:* In response to the comment about the CIP Codes, we note that this information is necessary to properly determine the program in which the borrower is enrolled. A CIP Code is a six-digit identifier that designates the subject matter of the program and therefore distinguishes between separate programs of study. As

we stated in the preamble of the IFR, it is necessary for the Department to collect this information because "section 455(q) of the HEA and the implementing regulations require that the borrower's maximum eligibility period be determined program by program." 78 FR at 28971. By identifying the program of study, CIP Code reporting will allow the Department to verify the proper reporting of loan receipt and changes in program enrollment to determine whether the borrower should lose the interest subsidy. This information, including CIP Codes, is necessary to ensure that other information reported by institutions is accurate and that borrowers' maximum eligibility periods and remaining eligibility periods are correctly calculated. While the commenter is correct that the definition of "educational program" in 34 CFR 600.2 does not specifically refer to a CIP Code, this definition does not preclude the Secretary from requiring institutions to report CIP Codes as part of the normal course of reporting Direct Loan origination and disbursement information to the COD System or enrollment information to NSLDS.

One goal of MAP-21 and the IFR and final regulations is to encourage students to complete their programs of study in a timely fashion by limiting Direct Subsidized Loan receipt and the interest subsidy. Without the collection of CIP Codes, we would not have sufficient information to perform meaningful analysis of this policy. The collection of the CIP Code is therefore necessary for the Department to implement the requirements of section 455(q) of the HEA.

With respect to the commenter's suggestion that the Department transfer data internally, we note that the two systems will be collecting the data at different times and for different purposes. For example, the data in the COD System will be used to determine a borrower's eligibility for a Direct Subsidized Loan under the 150 percent limit. Institutions report information to the COD system when originating or disbursing a Direct Loan (or reporting a change to a previously submitted origination or disbursement record). Because the COD System and NSLDS need the information about a borrower's program of study as of different times, institutions must report the same types of information to both systems.

Although the information reported through the two systems is similar, the specific information being reported will sometimes differ due to the passage of time. Thus, the internal transfer of data is not a viable approach.

Finally, with respect to the commenter with concerns regarding the burden on institutions associated with adjusting borrowers' records in COD and NSLDS: While we understand that the patterns described by the commenter do occur, we believe they are rare, and that for most borrowers, reporting enrollment and loan data will be straightforward. Nevertheless, we appreciate that for some borrowers, adjusting loan records requires additional work, and we appreciate that this task is one of many required of title IV aid administrators to help ensure the appropriate administration and awarding of title IV aid.

We also note, however, that the requirement that institutions update information is not new—institutions should have always been updating loan period and academic year dates, as necessary, in the COD system. This is especially the case for borrowers who withdraw and commence attendance at another institution, which must rely on the original institution's reporting of loan period and academic year information in tracking the borrower's progress toward the annual loan limit. If this information is not updated, it is possible that an institution will allow a borrower to receive Direct Loan funds in excess of the annual loan limit. To participate in the title IV programs, an institution is required to maintain proper records and meet numerous reporting requirements. Compliance with these requirements is necessary not only for the integrity of the taxpayer funds used to finance the title IV programs, but to ensure that only eligible students are receiving aid.

Congress required that a borrower's receipt of Direct Subsidized Loans be limited to a period of 150 percent of the borrower's program length. To attempt to ease the burden on institutions, the Department undertook the obligation of determining the borrowers' eligibility and possible loss of the interest subsidy. We believe that the alternative—requiring institutions to track borrower histories and make eligibility determinations with negative institutional consequences when funds were improperly disbursed—would be even more burdensome than properly reporting loan period dates, academic year dates, and additional information pertaining to a borrower's program of study.

*Changes:* None.

**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.

The regulatory changes made by the IFR were estimated to 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 and the extension of the 3.4 percent interest rate for subsidized loans made between July 1, 2012 and June 30, 2013 represented a transfer from the Federal government to Direct Subsidized Loan borrowers of \$5.7 billion over loan cohorts 2012 to 2022.

For purposes of this analysis, we deem the rulemaking to consist of the IFR as modified by these final regulations. Therefore, this final regulatory 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 regulations pursuant to 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, 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 specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Executive Order 13563 requires agencies “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 within OMB 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 final regulations only upon 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 final regulations are consistent with the principles in Executive Order 13563.

We also have determined that these final regulations will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis (RIA) we discuss the potential costs and benefits of the IFR as revised by the final regulations. To provide context for the changes made in response to comments received about the IFR, we have included a brief summary of the statutory and regulatory requirements relating to the 150 percent limitation. A full description and analysis of the 150 percent statutory and regulatory requirements and the regulatory impact of the IFR is available in the IFR

published in the **Federal Register** on May 16, 2013 (78 FR 28954).

### 1. Summary of the IFR

The IFR implemented 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 and then enroll in a program of study. The IFR included regulations: (i) Implementing the 3.4 percent interest rate for Direct Subsidized loans first disbursed on or after July 1, 2012, and before July 1, 2013; (ii) establishing the rules implementing the 150 percent policy including how the relevant periods would be measured, and under what circumstances students would become responsible for accruing interest on existing loans and be ineligible for further subsidized loans; (iii) determining the treatment of part-time enrollment, teacher preparation programs, and preparatory coursework; and (iv) modifying exit and entrance counseling requirements for providing borrowers information regarding the 150 percent limit on Direct Subsidized loans. The estimated \$3.957 billion in net budget savings that will be generated by the IFR 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, which was estimated to cost \$5.6 billion in outlays over the 2012 to 2022 loan cohorts.

The Federal government and student borrowers are most directly affected by the statutory changes implemented in the IFR. As discussed in the IFR, first-time borrowers as of July 1, 2013, 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 detailed in the IFR, the Department used a simulated pool of borrowers, borrowing patterns in existing NSLDS cohorts, and the Department's student loan model to estimate which borrowers will become ineligible for further Direct Subsidized loans, which borrowers would become responsible for accruing interest, and the net budget impact of a shift in volume from subsidized to unsubsidized loans. The IFR also described the treatment of teacher preparation programs and preparatory coursework for undergraduate and graduate programs. As discussed, the estimated net budget impact of the 150 percent regulations in the IFR was a savings of \$3.957 billion. The process also allowed the Department to quantify the effect of the IFR on student borrowers. The percentage of borrowers estimated to exceed the 150 percent limit 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; by that date, almost all borrowers should be first-time borrowers who are subject to the final regulations. The affected borrowers, approximately 578,000 by the 2023 cohort, would lose eligibility for future Direct Subsidized Loans and become responsible for accruing interest.

While the 150 percent limitation implemented in the IFR most directly affects the Federal government and students, institutions of higher education (IHEs) will face additional reporting and financial aid counseling requirements. The Department estimated that this reporting and financial aid counseling activity will cost IHEs approximately \$1.6 million, as detailed in the *Paperwork Reduction Act* section of the IFR. In the IFR, the Department welcomed comments about the estimates of the costs and benefits. No comments about the analysis were received.

## 2. Regulatory Alternatives Considered and Analysis of Significant Comments

In this portion of the RIA we describe the regulatory alternatives that the Department considered for the interim final regulations and significant changes made in these final regulations as compared to the alternative of retaining the treatment of the issue from the IFR. As described in the *Analysis of Comments and Changes*, comments were received from fourteen parties in response to the IFR, and the following

changes were made in response to those comments.

*Subsidized Usage Period for Rounding Methodology:* In response to comments about the calculation of the subsidized usage period and whether a subsidized usage period of 0.24 or less should be rounded down to zero, the Department revised the rounding methodology used to calculate a borrower's subsidized usage period. The rounding rule is meant to be easy to understand, to leave borrowers with a remaining subsidized usage period that they can use, and to provide similar treatment for similarly situated borrowers. The Secretary changed the rounding methodology from rounding down to the nearest quarter in the IFR to rounding up or down to the nearest tenth in these final regulations. This will lead a borrower who enrolls in the Fall semester and not the Spring semester and who has an unrounded subsidized usage period of 0.46 to have a rounded subsidized usage period of .5 instead of .25.

*Proration of Subsidized Usage Period and the Annual Loan Limit Exception:* In response to comments about the interaction of the annual loan limit exception and the proration of subsidized usage periods for part-time borrowers, the Department decided to retain the annual loan limit provision of the IFR and then apply proration for part-time enrollment for a period of less than a full academic year. Under the IFR, a borrower who receives the full annual loan limit for a period of less than an academic year would have a subsidized usage period of one year, even if the student was enrolled part-time. Examples discussed in the *Analysis of Comments and Changes* section of this preamble demonstrate how this rule could interact with the proration for part-time borrowing to create different results for similarly situated borrowers. The revised rules for the proration of usage periods for part-time borrowers who receive the full annual loan limit for enrollment that is less than a full academic year may result in some students having longer subsidized usage periods compared to the result under the IFR.

*Treatment of Baccalaureate Degree Completion Programs and Selective Admission Associate Degree Programs:* Commenters noted that several institutions offer baccalaureate degree completion programs that are two years in length because credit is given for a student's prior work or credits. To minimize the differences in treatment of a student who completes two years of coursework and then transfers to one of these degree completion programs and a

borrower who transfers to a four-year program, the Department has decided that, for purposes of the 150% limitation, two-year programs that meet certain criteria will be considered baccalaureate degree programs equivalent to those that are four years in duration. These institutions are permitted to report a four-year program length for these programs to the Department, for a maximum usage period of six years. To qualify for this treatment, an institution that offers these two year programs must require, as a prerequisite for admission into the program, completion of an associate degree or the successful completion of at least two years of postsecondary coursework in an eligible program.

Several commenters also pointed out that some associate degree programs are similar to the baccalaureate degree completion programs previously described in that they require the completion of a separate associate degree or two years of coursework prior to admission. If these programs are treated as two year programs for purposes of the 150 percent limitation, students in these programs would not have a sufficient remaining subsidized usage period to complete the program if they received Direct Subsidized Loans to complete the prerequisite degree or coursework. The Department decided to create a narrowly tailored special rule to address the concern for these specialized programs. Under these final regulations, associate degree programs that are designed specifically to confer a more specialized credential after completion of postsecondary coursework and that are equivalent in length to a baccalaureate degree program are allowed to report a program length of four years. Qualifying programs must be selective admission programs that admit students based on competitive criteria such as grade point average, entrance exam scores, written essays, recommendation letters and class rank, or other factors and be in a profession that requires licensure or certification by the State.

Taken together, the Department estimates that the changes in these final regulations will not have a significant net budget impact. Rounding up or down to the nearest tenth instead of down to the nearest quarter may result in some students losing Direct Subsidized Loan eligibility or interest subsidy absent the revised calculations. However, the other changes in these final regulations (the proration for part-time, part-year borrowers who receive the full annual loan limit or the special rule for selective admission or bachelor's degree completion programs)

will result in the retention of loan eligibility or interest subsidy for some borrowers who might have otherwise lost such eligibility. We expect the number of students affected by these changes to be insubstantial. For example, the Department estimates that less than two percent of part-time, part-year borrowers receive the full annual loan limit. In total, these changes are offsetting and do not have a significant effect on the net budget impact detailed in the interim final regulations.

The IFR described the Department's consideration of multiple approaches to the treatment of preparatory coursework and teacher certification coursework. 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>3</sup> For this reason, we declined to treat these courses as stand-alone programs for the purposes of subsidized loan eligibility. In this preamble, the Department clarified that the 12-month limitation related to preparatory coursework is on Direct Subsidized Loan receipt and not enrollment. With respect to teacher certification coursework, because many States require teachers to obtain such certificates as a prerequisite for teaching or as a requirement to continue teaching, the Department concluded that these programs should be treated as stand-alone programs for purposes of the 150 percent limit and that the borrower's eligibility for subsidized loans will not be affected by periods in which the borrower received Direct Subsidized Loans for earlier undergraduate programs. However, to be consistent with the overall intent of the 150 percent limitation, we provided in the IFR that teacher certification

coursework is a continuation of any previous teacher certification coursework for the purpose of subsidized loan eligibility. No changes were made to this policy in response to comments.

**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 the IFR and these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of the IFR and final regulations. Expenditures are classified as transfers between affected student loan borrowers and 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 associated with 150 percent limit as defined in the IFR as compared to a pre-statutory baseline.	\$212.8 (7%). \$237.6 (3%).
From Whom To Whom? .....	From affected student loan borrowers to the Federal government.
Annualized Monetized Transfers associated with the extension of the 3.4% interest rate to Direct Subsidized loans first disbursed on or after July 1, 2012 and before July 1, 2013. The baseline is the IFR.	\$690.8 (7%). \$619.9 (3%). *
From Whom To Whom? .....	From the Federal government to affected student loan borrowers.

\* These figures reflect the annual monetized transfers associated with the estimated \$3.957 billion in net budget savings that will be generated by the amendments in the IFR and these final regulations and 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, which is estimated to cost \$5.6 billion in outlays over the 2012 to 2022 loan cohorts.

**Regulatory Flexibility Act Certification**

In the IFR, published May 16, 2013, the Department analyzed the effect of

the regulations on small entities and asked for comments about the analysis. The estimated burden on small entities

from the requirements in the IFR is summarized in Table 1.

TABLE 1—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

We did not receive any comments on our regulatory flexibility analysis in the

IFR, and did not make any changes in the final regulations that affected this

analysis. Therefore, the estimated

<sup>3</sup> Paul Attewell et al., "New Evidence on College Remediation," *Journal of Higher Education* 77, no. 5 (October 2006): 886-924.

burden analyzed in the IFR remains the same.

**Paperwork Reduction Act of 1995**

We received no comments on the Paperwork Reduction Act portion of the IFR and none of the changes to the regulation increase or decrease the burden associated with the regulation. OMB initially approved the collection of information necessary to implement the 150 percent limit under OMB control number 1845-0116 on an emergency basis, which limited the collection's authority to six months (the emergency approval of the collection expires on December 31, 2013). The collection is currently undergoing full Paperwork Reduction Act review, with the attendant 60- and 30-day comment periods.

**Intergovernmental Review**

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

**Assessment of Educational Impact**

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

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

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

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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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: January 14, 2014.

**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. In paragraph (f)(1)(iii), removing the words “down to the nearest quarter” and adding, in their place, the words “to the nearest tenth”.

■ B. In the formula for calculating a subsidized usage period in paragraph (f)(1)(iii), adding the words “for annual loan limit purposes” after the words “days in the academic year”.

■ C. In paragraph (f)(4)(i), adding the word “full” before the words “annual loan limit”.

■ D. In paragraph (f)(4)(ii), removing the words and punctuation “Except as provided in paragraph (f)(4)(i) of this section, for” and adding “For” in their place.

■ E. Adding paragraph (f)(8).

The addition reads as follows:

**§ 685.200 Borrower eligibility.**

\* \* \* \* \*

(f) \* \* \*

(8) *Special admission degree programs.* (i) For purposes of calculating the maximum eligibility period, a bachelor's degree program that requires an associate degree or the successful completion of at least two years of postsecondary coursework as a prerequisite for admission has a program length of four years.

(ii) For purposes of calculating the maximum eligibility period, a selective admission associate degree program that requires an associate degree or the successful completion of at least two years of postsecondary coursework as a prerequisite for admission has a program length of four years. For

purposes of this paragraph (f)(8)(ii), a selective admission associate degree program—

(A) Admits only a selected number of applicants based on additional competitive criteria which may include entrance exam scores, class rank, grade point average, written essays, or recommendation letters; and

(B) Provides the academic qualifications necessary for a profession that requires licensure or a certification by the State.

\* \* \* \* \*

[FR Doc. 2014-00928 Filed 1-16-14; 8:45 am]

**BILLING CODE 4000-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2012-0650; FRL-9905-54-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans; Indiana; Consent Decree Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of Indiana's construction permit rule for sources subject to the state operating permit program regulations. These provisions authorize the state to incorporate terms from Federal consent decrees and Federal district court orders into these construction permits. EPA is also approving public notice requirements for these permit actions. These rules will help streamline the process for making Federal consent decree and Federal district court order requirements permanent and Federally enforceable.

**DATES:** This final rule is effective on February 18, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0650. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at