

**DEPARTMENT OF EDUCATION****34 CFR Parts 668, 682, and 685**

RIN 1840-AD18

[Docket ID ED-2014-OPE-0161]

**Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to create a new income-contingent repayment plan in accordance with the President's initiative to allow more Direct Loan borrowers to cap their loan payments at 10 percent of their monthly incomes. The Secretary is also proposing changes to the Federal Family Education Loan (FFEL) Program and Direct Loan Program regulations to streamline and enhance existing processes and provide additional support to struggling borrowers. These proposed regulations would also amend the Student Assistance General Provisions regulations by expanding the circumstances under which an institution may challenge or appeal a draft or final cohort default rate based on the institution's participation rate index.

**DATES:** We must receive your comments on or before August 10, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

• *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 "Are you new to the site?"

• *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Giana, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006-8502.

**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:** For further information related to the Servicemembers Civil Relief Act (SCRA), the treatment of lump sum payments made under Department of Defense student loan repayment programs for the purposes of public service loan forgiveness, and expanding the use of the participation rate index (PRI) challenge and appeal, Barbara Hoblitzell at (202) 502-7649 or by email at: [Barbara.Hoblitzell@ed.gov](mailto:Barbara.Hoblitzell@ed.gov). For information related to loan rehabilitation, Ian Foss at (202) 377-3681 or by email at: [Ian.Foss@ed.gov](mailto:Ian.Foss@ed.gov). For information related to the Revised Pay As You Earn repayment plan, Brian Smith or Jon Utz at (202) 502-7551 or (202) 377-4040 or by email at: [Brian.Smith@ed.gov](mailto:Brian.Smith@ed.gov) or [Jon.Utz@ed.gov](mailto:Jon.Utz@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:** These proposed regulations would amend the Student Assistance General Provisions regulations governing Direct Loan cohort default rates (CDRs) to expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI. In addition, we are proposing changes to the FFEL Program regulations to streamline and enhance existing processes and provide support to borrowers by establishing new

procedures for FFEL Program loan holders to identify servicemembers who may be eligible for benefits under the SCRA. We are proposing regulations that would require guaranty agencies to provide FFEL Program borrowers who are in the process of rehabilitating a defaulted loan with information on repayment plans available to them after the loan has been rehabilitated as well as additional financial and economic education materials. We are also proposing several technical changes to the loan rehabilitation provisions contained in § 682.405. In addition, these proposed regulations would add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209 of the Direct Loan Program regulations. The REPAYE plan is modeled on the existing Pay As You Earn repayment plan, and would be available to all Direct Loan student borrowers regardless of when the borrower took out the loans. Finally, the proposed regulations would also allow lump sum payments made through student loan repayment programs administered by the Department of Defense to count as qualifying payments for purpose of the Public Service Loan Forgiveness Program.

**Summary of the Major Provisions of This Regulatory Action:**

To expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or official CDR based on the institution's PRI, the proposed regulations would—

• Permit an institution to bring a timely PRI challenge or appeal in any year that the institution's CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years.

• Provide that an institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal to 30 percent, and will not be placed on provisional certification based on two such rates, if it timely brings an appeal or challenge with respect to any of the relevant rates and demonstrates a PRI less than or equal to 0.0625, provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.

• Provide that a successful PRI challenge with respect to a draft CDR is effective in preventing the institution from being placed on provisional certification or losing eligibility in

subsequent years based on the official CDR for that year if the official rate is less than or equal to the draft rate.

To reduce the burden on active duty servicemembers who may be entitled to an interest rate reduction under the SCRA, the proposed regulations would—

- Require FFEL Program loan holders to proactively use the authoritative database maintained by the Department of Defense to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent.

- Permit a borrower to use a form developed by the Secretary to provide the loan holder with alternative evidence of active duty service to demonstrate eligibility when the borrower believes that the information contained in the Department of Defense database may be inaccurate or incomplete.

In regard to loan rehabilitation, the proposed regulations would—

- To assist with the transition to loan repayment for a borrower who rehabilitates a defaulted loan, require a guaranty agency to: Provide each borrower with whom it has entered into a loan rehabilitation agreement with information on repayment plans available to the borrower after rehabilitating the defaulted loan; explain to the borrower how to select a repayment plan; and provide financial and economic education materials to borrowers who successfully complete loan rehabilitation.

- To conform with the Higher Education Act of 1965, as amended (HEA), amend § 682.405 with respect to the cap on collection costs that may be added to a rehabilitated loan when it is sold to a new holder and the treatment of rehabilitated loans for which the guaranty agency cannot secure a buyer.

To establish a new widely available income-contingent repayment plan targeted to the neediest borrowers, the proposed REPAYE regulations would—

- In the case of a married borrower filing a separate Federal income tax return, use the adjusted gross income (AGI) of both the borrower and the borrower's spouse to determine whether the borrower has a partial financial hardship (PFH) and to calculate the monthly payment amount. A married borrower filing separately who is separated from his or her spouse or who is unable to reasonably access his or her spouse's income is not required to provide his or her spouse's AGI.

- Limit the amount of interest charged to the borrower of a subsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to

pay the accrued interest (resulting in negative amortization). This limitation applies after the consecutive three-year period during which the Secretary does not charge the interest that accrues on subsidized loans during periods of negative amortization.

- Limit the amount of interest charged to the borrower of an unsubsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization).

- For a borrower who only has loans received to pay for undergraduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 20 years of qualifying payments.

- For a borrower who has at least one loan received to pay for graduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 25 years of qualifying payments.

- Provide that, for each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower. If a process becomes available in the future that allows borrowers to give consent for the Department to access their income and family size information from the Internal Revenue Service (IRS) or another Federal source, the proposed regulations would allow use of such a process for recalculating a borrower's monthly payment amount.

- Provide that, for each year after a borrower's initial year on the REPAYE plan, the Secretary determines whether the borrower has a PFH. If the borrower does not have a PFH, but previously had a PFH, any accrued interest would be capitalized.

- Provide that, if the borrower does not provide the income information needed to recalculate the monthly repayment amount, the borrower is removed from the REPAYE plan and placed in an alternative repayment plan. The monthly payment amount under the alternative repayment plan would equal the amount required to pay off the loan within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end date of the 20- or 25-year REPAYE plan repayment period, whichever is earlier.

- Allow the borrower to return to the REPAYE plan if the borrower provides the Secretary with the income information for the period of time that the borrower was on the alternative

repayment plan or another repayment plan. If the payments the borrower was required to make under the alternative repayment plan or the other repayment plan are less than the payments the borrower would have been required to make under the REPAYE plan, the borrower's monthly REPAYE payment amount would be adjusted to ensure that the excess amount owed by the borrower is paid in full by the end of the REPAYE plan repayment period.

- Provide that payments made under the alternative repayment plan would not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program, but may count in determining eligibility for loan forgiveness under the REPAYE plan, the income-contingent repayment plan, the income-based repayment plans, or the Pay As You Earn repayment plan (each of these plans may be referred to as an "income-driven repayment plan" or "IDR plan") if the borrower returns to the REPAYE plan or changes to another income-driven repayment plan.

The proposed regulations also would allow lump sum payments made on a borrower's behalf through the student loan repayment programs administered by the Department of Defense to count as qualifying payments for purposes of the Public Service Loan Forgiveness Program in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis*, the benefits of the proposed regulations, which would require guaranty agencies to provide additional information to borrowers in the process of rehabilitating a defaulted loan, include a reduction of the risk that the borrower would re-default on the loan after having successfully completed loan rehabilitation.

There would be costs incurred by guaranty agencies under the proposed regulations. In particular, guaranty agencies would be required to make information about repayment plans available to borrowers during the rehabilitation process.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify

clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking, as we are not required to respond to such comments.

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 proposed 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 Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing [Regulations.gov](http://Regulations.gov). You may also inspect the comments in person in room 8055, 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. To schedule a time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

*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 the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

### Background

The Secretary proposes to amend §§ 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 682.410, 685.202, 685.208, 685.209, 685.219, and 685.221 of title 34 of the Code of Federal Regulations (CFR). The regulations in 34 CFR part 668 pertain to Student Assistance General Provisions. The regulations in 34 CFR part 682 pertain to the FFEL Program. The regulations in 34 CFR part 685 pertain to the Direct Loan Program. We are proposing these amendments to: (1) Establish a new income-contingent repayment plan in

the Direct Loan Program; (2) establish procedures for FFEL Program loan holders to use to identify U.S. military servicemembers who may be eligible for a lower interest rate on their FFEL Program loans under section 527 of the SCRA; (3) expand availability of PRI challenges and appeals from the potential consequences of an institution's CDR; (4) provide guaranty agency support for borrowers who are rehabilitating a defaulted FFEL Program loan; (5) make two technical corrections to reflect the statutory changes to the provisions governing loan rehabilitation in the FFEL Program; and (6) amend the application of lump sum student loan payments by the Department of Defense on behalf of borrowers pursuing public service loan forgiveness.

### Public Participation

On September 3, 2014, we published a notice in the **Federal Register** (79 FR 52273) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations to allow more student borrowers of Federal Direct Loans to use a "Pay as You Earn" repayment plan in accordance with the Presidential Memorandum issued on June 9, 2014. We also announced two public hearings at which interested parties could comment on the topic suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. The hearings were held on—

October 23, 2014, in Washington, DC; and

November 14, 2014, in Los Angeles, California.

Transcripts from the public hearings are available at [www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html).

We also invited parties unable to attend a public hearing to submit written comments on the proposed topics and to submit other topics for consideration. Written comments submitted in response to the September 3, 2014, **Federal Register** notice may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), within docket ID ED-2014-OPE-0161. Instructions for finding comments are also available on the site under "How to Use Regulations.gov" in the Help section.

On December 19, 2014, we published a notice in the **Federal Register** (79 FR 75771) requesting nominations for negotiators to serve on the negotiated rulemaking committee and setting a schedule for committee meetings.

### Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary in most cases must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: [www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html).

On December 19, 2014, the Department published a notice in the **Federal Register** (79 FR 52273) announcing its intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the Direct Loan Program authorized under title IV of the HEA. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; groups representing U.S. military servicemembers or veterans; financial aid administrators at postsecondary institutions; State attorneys general and other appropriate State officials; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, nonprofit institutions of higher education; private, for-profit institutions of higher

education; FFEL Program lenders and loan servicers; and FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies). The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Devon Graves, California State Student Association, and Jessi Morales (alternate), Generation Progress, representing students.

Toby Merrill, Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, and Johnson Tyler (alternate), South Brooklyn Legal Services, representing legal assistance organizations that represent students.

Jennifer Wang, Young Invincibles, and Suzanne Martindale (alternate), Consumers Union, representing consumer advocacy organizations.

Samuel Levine, Consumer Fraud Bureau, Office of the Attorney General of Illinois, and Tyler Stewart (alternate), Consumer Protection Division, Kentucky Office of the Attorney General, representing State attorneys general and other appropriate State officials.

Matthew Randle, Student Veterans of America, and Chris Cate (alternate), Student Veterans of America, representing U.S. military servicemembers or veterans.

Scott Cline, California College of the Arts, and Clair Jacobi (alternate), New York Institute of Technology College of Osteopathic Medicine, representing financial aid administrators.

Patricia Hurley, Glendale Community College, representing minority serving institutions.

Shannon Sheaff, Mohave Community College, and Helen Faith (alternate), Lane Community College, representing two-year public institutions.

Craig Fennell, Temple University, and Rachele Feldman (alternate), University of California, Berkeley, representing four-year public institutions.

Marian Dill, Lee University, and David DeBoer (alternate), Davenport University, representing private, non-profit institutions.

Melvina Johnson, Laureate Education, Inc., and Robert Mills (alternate), Ohio Centers for Broadcasting, Miami and Colorado Media Schools, representing private, for-profit institutions.

William Shaffner, MOHELA—Higher Education Loan Authority of Missouri, and Darin Katzberg (alternate), Nelnet, representing FFEL Program lenders and loan servicers.

Nancy Masten, Great Lakes Higher Educational Guaranty Corporation, and Diane Freundel (alternate), American Education Services/Pennsylvania Higher Education Assistance Agency, representing FFEL Program guaranty agencies and guaranty agency servicers.

Gail McLarnon, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on

February 24–26, 2015, March 31–April 2, 2015, and April 28–30, 2015.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: PRI challenges and appeals of potential institutional CDR sanctions, implementation of the SCRA in the FFEL Program, guaranty agency support for borrowers completing rehabilitation of a defaulted loan, two technical corrections to the loan rehabilitation regulations, the REPAYE plan, and the application of Department of Defense lump sum payments for borrowers seeking public service loan forgiveness. Under the protocols, a final consensus would have to include consensus on all six issues.

During the meeting, the Department explained that it planned to implement the provisions of the final REPAYE plan regulations in December 2015 and the final PRI challenge and appeal regulations in February 2017; the remaining regulatory changes would take effect in July 2016. Although non-Federal negotiators expressed concern that the projected implementation date for the expanded PRI challenge and appeals process could result in some community colleges choosing to leave the Direct Loan Program in the intervening period, the Department's capacity to provide increased opportunities for CDR challenges and appeals is predicated in the first instance on the automated support that will be provided through development of its planned computerized data challenge and appeals solution system (DCAS) within Federal Student Aid. DCAS is slated [to come on line?] for implementation in 2017.

During committee meetings, the committee reviewed and discussed the Department's drafts of regulatory

language and the committee members' alternative language and suggestions. At the final meeting on April 30, 2015, the committee reached consensus on the Department's proposed regulations. For this reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking and the organizations that they represent have agreed to refrain from commenting negatively on the consensus-based regulatory language. For more information on the negotiated rulemaking sessions, please visit: [www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info](http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info).

### Summary of Relevant Data

#### *Income-Driven Repayment Data*

At the request of the non-Federal negotiators, the Department provided certain data on borrower participation in the existing income-driven repayment or IDR plans. Specifically, we provided data on the tax filing status of borrowers applying for any IDR plan to show how many and what percentage are married and file separate Federal tax returns. We also provided data on borrowers who did not timely provide income documentation for the annual recertification of their income, including to what extent they recertified their income late or went delinquent, and information about borrowers who were in the PAYE repayment plan and who left that plan for another plan. We also provided the non-Federal negotiators data on year-to-year income changes for borrowers repaying their loans through an IDR plan. These data are available at: <http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html#2>.

The non-Federal negotiators expressed support for a process that would allow borrowers to give authorization to the Department to access their IRS income information for multiple years for the purposes of maintaining IDR enrollment. The Department would also support such a process, and in an Executive Memorandum dated March 10, 2015, the President tasked the Department to work with the IRS and Treasury to develop a plan to create this process. The non-Federal negotiators also expressed concern that the timing, contents, and methods of communicating with borrowers who must submit annual documentation of their income to recalculate their payment under an IDR plans were contributing to borrowers missing the deadline for submitting income

documentation. The Department announced it would conduct a pilot to test enhanced messaging techniques that will inform whether the current process should be modified to prevent more borrowers from missing their annual deadline. More information about the pilot is available at: [www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html#2](http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html#2).

### Summary of Proposed Changes

The proposed regulations would—

- Expand the provisions of §§ 668.16, 668.204, 668.208, and 668.214 regarding the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI.

- Amend §§ 682.202, 682.208, and 682.410 to require loan holders to determine a borrower's active duty military status for purposes of applying the SCRA maximum interest rate based on information from the authoritative database maintained by the Department of Defense.

- Amend § 685.202 to remove language that refers to the borrower's request for application of the SCRA interest rate limit and provide instead that the Secretary applies the SCRA interest rate limit "upon receipt" of evidence of the borrower's eligibility.

- Modify § 682.405 to require a guaranty agency to provide information to a borrower who is in the process of rehabilitating a defaulted FFEL Program loan to help ensure that the borrower understands the available repayment options upon successfully completing the loan rehabilitation.

- Make a technical correction to § 682.405 to conform with the HEA to reflect that the cap on collection costs that may be added to the unpaid principal of a rehabilitated loan when the loan is sold or assigned is 16 percent and require guaranty agencies to assign to the Secretary rehabilitated loans that they have been unable to sell to an eligible lender.

- Amend §§ 685.208, 685.209, 685.219, and 685.221 to provide for the REPAYE plan.

- Amend § 685.219 to provide for the application of lump sum payments made on a borrower's behalf through student loan repayment programs administered by the Department of Defense for purposes of the Public Service Loan Forgiveness Program in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

### Significant Proposed Regulations

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

#### Participation Rate Index Challenges and Appeals (§§ 668.16, 668.204, 668.208, and 668.214)

*Statute:* Sections 435(a)(2), (a)(8), and (m) of the HEA prescribe how PRIs are to be calculated and contain provisions regarding how and when an institution may challenge or appeal potential sanctions resulting from an institution's CDRs based on an applicable PRI.

*Current Regulations:* Section 668.204(c) provides the circumstances under which an institution may challenge the potential consequences of a draft or official CDR during the draft rate process, including challenges based on the institution's applicable PRI. Specifically, under § 668.204(c)(1), institutions with CDRs high enough to trigger sanctions (30 percent for two years for provisional certification, or, for loss of eligibility, either 30 percent for three consecutive years or 40 percent in a single year) may challenge those anticipated sanctions based on their PRI—that is, if the proportion of regular students enrolled on at least a half time basis who borrow certain Federal student loans is equal to or lower than the applicable statutory or regulatory threshold. Under § 668.204(c)(1)(ii) and (iii), institutions may only bring a PRI-based challenge in the year a sanction would be imposed.

Section 668.214 defines the conditions under which and the process by which an institution may appeal from the potential consequences of a CDR based on the PRI of Federal student loan borrowers relative to the institution's total enrollment of regular students who attended half time or more during a relevant twelve-month period selected by the school. Again, under § 668.214(a), PRI appeals may only be brought in the year a sanction would be imposed.

Section 668.16(m) specifies the circumstances in which the Department may provisionally certify an institution's program participation agreement based on the institution's CDRs, and the impact of requests for adjustment and appeals on imposition of that sanction.

Section 668.208 provides general requirements for institutions seeking to adjust their official CDRs and to bring certain appeals from their consequences, including provisions

preventing institutions from bringing the same type of appeal twice from the same CDR, and from appealing from a CDR after sanctions have already been imposed based on it.

*Proposed Regulations:* The proposed regulations would modify § 668.204 to permit an institution to bring a timely challenge, based on the relevant PRI (the number of regular students enrolled on at least a half time basis who borrow, divided by the total number of regular students enrolled on at least a half time basis) being equal to or less than 0.0625, in any year the institution's draft or official CDR was less than or equal to 40 percent but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (counting the draft rate as the most recent rate), provided that the institution had not brought a PRI challenge or appeal with respect to that rate before, and that the institution had not previously lost eligibility or been placed on provisional certification based on that rate. The rule would retain the existing provision permitting an institution to challenge the potential consequences of a draft rate exceeding 40 percent, if the PRI is less than or equal to 0.0832.

Section 668.204 would also be modified to provide that a successful PRI challenge from a draft CDR that exceeds the sanction thresholds of 40 percent or 30 percent avoids provisional certification and loss of eligibility based on the corresponding official CDR, as long as the official CDR is less than or equal to the draft CDR. In such a case, the institution would not be required to bring a PRI appeal with respect to the official CDR it had successfully challenged at the draft rate stage, and no sanctions would be imposed, either in that year or a later year, based on the official CDR. Moreover, as under current law, a successful PRI challenge with respect to a draft CDR would preclude the imposition of sanctions in the year the official CDR was issued, regardless of whether the official CDR was higher or lower than the draft CDR. However, if the official CDR was higher than the draft CDR, the institution would need to bring a PRI appeal or challenge from the official, higher CDR, to avoid that higher CDR possibly resulting in provisional certification or loss of eligibility, as applicable, in a later year. An earlier challenge to a lower, draft CDR would not be sufficient to avoid sanctions from being based on the higher official rate in later years if that official rate was one of three successive official rates of 30 percent or higher.

The proposed regulations would also amend § 668.214 to provide that an

institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal to 30 percent, and will not be placed on provisional certification based on two such rates, if it has timely brought an appeal with respect to any of the relevant rates and demonstrated a PRI less than or equal to 0.0625. As in current law, the institution may make this appeal only if it has not brought a PRI challenge or appeal with respect to that rate before, and if it has not previously lost eligibility or been placed on provisional certification based on that rate. The rule would retain the existing provision for an institution to appeal from loss of eligibility if its most recent official CDR exceeds 40 percent, if the PRI is less than or equal to 0.0832. The time for appealing would run from the date of receipt of notice of the rate or, if the most recent official rate exceeds 40 percent, the date of receipt of notice of loss of eligibility.

The proposed regulations would amend § 668.16 to clarify that if an institution brought a PRI challenge or appeal with respect to a CDR under the expanded circumstances described in the proposed regulations, provisional certification would not be imposed based on that CDR as long as the challenge or appeal was either pending or successful.

The proposed regulations would also amend § 668.208 to incorporate references to PRI challenges and appeals in existing provisions relating to the effect of, and limitations on, CDR appeals.

*Reasons:* Community college administrators and advocates, including a non-Federal negotiator, have requested an annual challenge and appeals process that would permit institutions to appeal or challenge based on PRI in any year following issuance of a draft or official rate equaling or exceeding 30 percent, rather than only in years in which a sanction would be imposed. They argued that an annual PRI challenge and appeals process would provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. The negotiator suggested that enabling schools to receive a PRI exemption at any point during the reporting process would mitigate the impact of negative reports regarding their borrower repayment rate and encourage more community colleges to participate in the title IV loan programs. The negotiator further requested that the PRI appeal process be simplified to reduce the

administrative burden on both institutions and the Department.

We are proposing to provide additional opportunities for institutions to bring PRI challenges and appeals to lessen the likelihood that an institution will, through its failure to bring a challenge or appeal in one of the opportunities available under existing law, experience sanctions based on a CDR that includes only a relatively small proportion of its full-time enrollment of regular students, and to permit the institution an opportunity to more swiftly establish that a high CDR is not reflective of the bulk of its student body. Under the proposed regulations, there would be multiple timeframes in which a challenge or appeal could be brought to prevent imposition of sanctions, subject only to provisions limiting the institution to one PRI challenge or appeal per draft or official CDR, and precluding the institution from challenging or appealing a CDR on which a sanction has already been imposed. The proposed regulations would meet the request that we reduce administrative burden by relieving institutions of the responsibility for bringing a PRI appeal in a later year, if the institution already challenged the draft rate, and the official rate was equal to or lower than that draft rate. (If the official rate were higher than a draft rate, the institution would still need to bring a PRI appeal.)

Non-Federal negotiators were concerned that the delayed implementation of the changes to the PRI challenge and appeals process coincident would result in some community colleges choosing to leave the Direct Loan Program in the intervening period. However, the ability to provide increased opportunities for CDR challenges and appeals is predicated on the automated support that will be provided through the implementation of the data challenge and appeals solution (DCAS) within Federal Student Aid. DCAS is slated for implementation in 2017.

**Servicemembers Civil Relief Act (§§ 682.202, 682.208, 682.410, and 685.202)**

*Statute:* Section 428(d) of the HEA provides that the maximum interest rate that may be charged to certain servicemembers under section 207 of the SCRA, 50 U.S.C. App. § 527, applies to loans under the Direct Loan Program and the FFEL Program.

*Current Regulations:* Section 682.202(a)(8) of the FFEL Program regulations and § 685.202(a)(11) of the Direct Loan Program regulations provide that once a loan holder (the Secretary or

a FFEL Program loan holder) receives a borrower's written request for application of the SCRA maximum interest rate and a copy of the borrower's military orders, the maximum interest rate on any Direct Loan or FFEL Program loan made prior to the borrower entering active duty status is six percent, as provided in 50 U.S.C. 527, App. section 207(a), while the borrower is on active duty status.

Section 682.410(b)(3) of the FFEL Program regulations establishes the interest rate guaranty agencies may charge borrowers on defaulted loans they hold.

*Proposed Regulations:* The proposed regulations would modify § 682.202(a)(8) to require FFEL Program loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information obtained from the authoritative electronic database maintained by the Department of Defense and to clarify that, under the SCRA, the interest rate includes any other charges or fees applied to the loan.

The proposed regulations would add new paragraph § 682.208(j) to define the requirements for FFEL Program loan holders to use the official electronic database maintained by the Department of Defense to identify all borrowers who are active duty servicemembers and who are eligible for the SCRA interest limit, confirm the dates of the borrower's active duty status, and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent. These requirements would include—

- Applying the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database or alternative evidence of active duty service received by the loan holder, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date;

- In the case of a reservist, using the reservist's notification date as the start date of the military service period;

- For PLUS loans with an endorser, applying the SCRA interest limit on the loan based on the borrower's or endorser's active duty status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan;

- In cases where both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, specifying that the loan holder must use the earliest active duty start date of either party and the latest

active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit;

- For joint consolidation loans, applying the SCRA interest rate limit on the loan if either of the borrowers is eligible for the limit;

- If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit, specifying that the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit;

- If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, specifying that the underlying loan holder must return the overpayment to the holder of the consolidation loan; and

- For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan (*i.e.*, where the SCRA benefit is granted just before a loan is paid in full), specifying that the loan holder must refund the amount of that overpayment to the borrower.

The proposed regulations would amend § 682.410(b)(3) of the FFEL Program regulations to include a requirement that guaranty agencies apply the SCRA interest rate to the loans of eligible borrowers.

The proposed regulations would also amend § 685.202(a)(11) to clarify that, in regard to Direct Loans, the Secretary will apply the SCRA interest rate limit upon the receipt of evidence from the official electronic database maintained by the Department of Defense or other information provided by the borrower of the borrower's active duty military service and that, under SCRA, the interest rate includes any other charges or fees applied to the loan.

*Reasons:* In 2011, we allowed servicers to use the DMDC database to clarify beginning and end dates of military service, where orders were unclear. The proposed regulations would formalize a process that the Department and many FFEL Program lenders have been using since 2014 to confirm that a borrower with an outstanding loan who is (or has been) in military service and the dates of that service, for the purposes of the SCRA interest rate limitation. The proposed regulations also reflect input from the negotiating committee.

### Background

In June 2011, we sent a letter to organizations representing FFEL

Program lenders, guaranty agencies, and loan servicers in response to their questions regarding the requirements for applying the SCRA interest rate limit. In that letter, we noted that under the SCRA, a borrower (or the borrower's representative) must provide the lender or servicer with a copy of the borrower's military orders that reflect the borrower's active duty status and the borrower must make a written request to the lender to apply the lower interest rate under the SCRA. In response to a series of later inquiries, the Department clarified that the borrower could submit the written request for the SCRA interest rate benefit through electronic means (such as an email or text message).

On August 25, 2014, we issued a Dear Colleague Letter (DCL) (<http://ifap.ed.gov/dpccletters/GEN1416.html>) to announce that we had adopted new procedures for determining which borrowers with loans held by the Department are eligible for the interest rate limit under the SCRA and for what periods.

Under the new procedures, the Department's loan servicers use the Department of Defense's SCRA Web site, which is available at [www.dmdc.osd.mil/appj/scra](http://www.dmdc.osd.mil/appj/scra), to access the Defense Manpower Data Center (DMDC) database. The DMDC database provides sufficient supporting documentation of an individual's eligibility for the SCRA interest rate limitation by identifying borrowers who are or have been in military service and the dates of that service. We directed our loan servicers to check the names of the borrowers of the loans they service against the DMDC database and to apply the interest rate limitation to the accounts of eligible borrowers without a request from the borrower.

At the same time, we authorized and encouraged FFEL Program lenders and lender-servicers to use the DMDC's SCRA Web site to identify borrowers who are eligible for the interest rate limitation under the SCRA and to apply that limitation. We encouraged FFEL Program loan holders and servicers to check the names of all borrowers whose loans they service against the DMDC database to identify borrowers who qualify for the SCRA interest rate limitation. Once a borrower's status and service dates had been confirmed using the DMDC database, we authorized the loan holder to use the DMDC database-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember's military orders to support the borrower's receipt of the SCRA interest rate limitation.

The DCL instructed the loan servicer to retain the supporting information from the DMDC database in the borrower's file and to notify the borrower when the interest rate on the loan has been changed.

Under the process described in the DCL, the applicant does not need to request the lower interest rate or provide any notice to the loan servicer, and the loan servicer would rely on the DMDC database and not on information from the servicemember. Under these circumstances, and under these proposed regulations, the 180-day time limit is deemed no longer applicable in any situation.

Reservists who receive orders to report for military service or who are in military service are also entitled to the interest rate limitation under the SCRA. In the DCL, we clarified that a lender may confirm the eligibility of a reservist using the DMDC database and rely on the dates reflected in the system as the active duty service period for which the borrower is eligible for the reduced interest rate, using the reservist's order notification date as the start date of the service period.

The DCL also noted that there are two important limitations on the application of the SCRA's interest rate limitation to FFEL Program loans and Direct Loans. First, the SCRA applies only to loans taken out by a servicemember before the servicemember entered active duty military service. It does not apply to loans taken out after the borrower's active duty military service began. Second, because a consolidation loan is a new loan, a consolidation loan made after the borrower has started active duty military service is not eligible for benefits under the SCRA even if the underlying loans were taken out prior to the start of active duty service. For this purpose, a consolidation loan is considered eligible for benefits under the SCRA as long as the borrower applied for the consolidation loan before starting active duty military service.

In the DCL we assured FFEL Program lenders that, if they used the DMDC database to confirm a borrower's SCRA status and apply the interest rate limitation, and maintained the supporting information from the DMDC database, they would not be liable to the Department of Education for any financial liabilities if any information provided by the DMDC database is found to be incorrect.

The Department has used the DMDC database to begin, extend, or end, as appropriate, the use of the SCRA interest rate limit of six percent since August of 2014. The proposed

regulations would require FFEL Program loan holders and guaranty agencies to use the DMDC database in the same manner, so that FFEL and Direct Loan Program borrowers receive equitable treatment on all of their Federal student loans.

#### Discussions With Negotiators

Non-Federal negotiators expressed concern that a borrower's active duty service record may be missing from or inaccurately reflected in the DMDC database, particularly in cases where the borrower's name has changed. While the draft proposed regulations presented to the committee provided that a borrower could submit alternative evidence, including a copy of military orders or certification of the borrower's military service from an authorized official in connection with the borrower's request for another benefit on the loan, the non-Federal negotiators requested that a broader array of evidence be permitted for this purpose. While the Department declined to include letters or other attestations as acceptable evidence of active duty service, we agreed to develop a form that could be used by a servicemember seeking to provide evidence of his or her active duty service.

Some negotiators asked whether the proposed regulations would have an effect on a servicemember's private right of action under the SCRA. The Department affirmed that the proposed regulations are not intended to affect any private right of action that a borrower may have under the SCRA.

A non-Federal negotiator expressed concern that the reference to the SCRA interest rate limit of six percent might be interpreted by some loan holders to mean that a borrower's interest rate could be raised to six percent during periods of qualifying active duty military service. We assured the negotiator that holders and servicers of Federal student loans cannot raise the interest rate on a FFEL or Direct Loan Program loan to six percent if the statutory interest rate on the loan is lower than six percent.

Representatives of the FFEL Program community raised several points related to the applicability of current HEA and SCRA statutory provisions during the discussions. First, they asked whether the \$600 annual (\$50 monthly) payment rule in the HEA still applies. We confirmed that the minimum payment amount requirement in the HEA does apply. Second, they asked if the rule that requires a borrower to request SCRA benefits within 180 days of the servicemember's termination or release date from military service is no longer

applicable when the benefit is being requested by the servicemember and not limited to when the servicer uses the DMDC database. We reiterated that the 180-day time limit is no longer applicable in any situation and not just when the servicer is using the database. Finally, they suggested that the effective date of August 14, 2008, be retained in the heading to § 682.202(a)(8) to ensure a universal understanding that SCRA benefits cannot precede that date. We declined to retain the historical date in the regulatory language, but agree that SCRA benefits cannot predate the effective date of the Higher Education Opportunity Act (HEOA) of August 14, 2008, which brought the SCRA benefit into the HEA.

Representatives of the FFEL Program community also submitted a series of hypothetical scenarios to clarify their understanding of how the SCRA interest rate limit would be applied under varying borrower and active duty service circumstances. The Department provided responses to each of these hypothetical scenarios and offered to continue to provide this kind of guidance and support when the loan holders encounter actual borrower circumstances where the appropriate application of the SCRA interest rate limit is not immediately clear.

Because the SCRA language includes references to "other charges or fees applied to the loan" that would be covered by the interest rate limit, the non-Federal negotiators requested that this preamble discussion include the specific charges associated with the Federal student loan programs that would be covered by SCRA. The possible additional charges that may be applied to Federal student loans are late fees and collection costs.

The non-Federal negotiators requested clarification on the meaning of "active duty military service." Based on 50 U.S.C. App. § 511 and 10 U.S.C. 101 the Department determined that, for purposes of the SCRA interest rate limit, the term "active duty" means full-time duty in the active military service of the United States. It also includes full-time training duty, annual training duty, and attendance, while in active military service, at a school designated as a service school by law or by the Secretary of a branch of the military. Active military service for a member of a National Guard includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds. The non-Federal negotiators also

requested clarification on the minimum term of active duty service to qualify for the SCRA interest rate limit. Under 10 U.S.C. 101 the term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

The non-Federal negotiators also requested that the preamble address the possibility that an endorser of a Stafford loan may seek the SCRA interest rate limit. The Department noted that there have not been endorsers on Stafford loans since 1992 and that it is very unlikely that one of these individuals will still be liable on the loan and will request the SCRA interest rate limit. However, if this unlikely event did occur, the Department would expect these endorsers to receive the same treatment as endorsers of PLUS loans.

A non-Federal negotiator asked why a borrower who submits a combination of evidence to establish his or her active duty service for the purpose of the SCRA interest rate limit should be provided the interest rate limit for the longest eligible period verified with the official electronic database, or alternative evidence of active duty service received by the loan holder, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date. We believe that, when the data are inconsistent, the most effective way to ensure the servicemember receives the benefit to which she or he is entitled is to use the earliest active duty start date and the latest active duty end date.

The committee also discussed how to address situations in which the lender learns, after the effective date of these regulations, that a borrower may have been eligible for the SCRA interest rate limit but the loan has been paid in full before the lender learned that the borrower was eligible. The Department and the loan servicers noted that they may not have current contact information for these borrowers and would not have a means of providing a refund. The proposed regulations do not specifically address this situation but do not preclude a lender from making a refund if it can.

#### Guaranty Agency Counseling for Repayment Transition (§ 682.405)

*Statute:* Under section 428F of the HEA, a borrower may rehabilitate a defaulted FFEL Program loan once by making nine on-time payments over a 10-month period. The payments are to be "reasonable and affordable" and are to be based on the borrower's "total financial circumstances." Upon the

successful rehabilitation of the defaulted loan, all of the terms, conditions, and benefits of the loan, such as repayment plans like the Income-Based Repayment (IBR) Plan and deferments, are available to the borrower.

*Current Regulations:* Section 682.405 provides for a guaranty agency to, after entering into an agreement with a FFEL Program borrower to rehabilitate a defaulted loan, limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation. It does not specifically require or authorize a guaranty agency to counsel the borrower concerning the borrower's rights and responsibilities after the borrower has rehabilitated the defaulted loan.

*Proposed Regulations:* Proposed § 682.405(c) would require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into a rehabilitation agreement regarding the repayment options that will be available to the borrower after loan rehabilitation is completed.

*Reasons:* Some guaranty agencies have reportedly interpreted the existing regulatory language concerning the limitation of contact with the borrower to mean that they are not permitted to provide information to the borrower about repayment options after loan rehabilitation. This approach may have contributed to misunderstandings among some borrowers who have rehabilitated their defaulted FFEL Program loans. For instance, borrowers in such circumstances may not fully understand that, if they do not specifically choose another plan, the new holder of their loan will place the loan on the 10-year standard repayment plan, which generally results in a much higher payment than the payment the borrower made to rehabilitate the defaulted loan. Being placed on the 10-year standard repayment plan could be confusing for a borrower, and the payments may not be affordable.

During the negotiations, non-Federal negotiators representing FFEL Program guaranty agencies and servicers requested that they be permitted to engage in a practice equivalent to what occurs in the Direct Loan Program for borrowers who rehabilitate a defaulted Direct Loan. In the Direct Loan Program, borrowers who rehabilitate a defaulted Direct Loan are initially placed on an alternative repayment plan. The payment amount that the borrower made to rehabilitate the loan is maintained for three months under the alternative repayment plan while the

Department's loan servicer provides information to the borrower about the availability of other repayment plans. If the borrower does not choose a new repayment plan during the three-month, post-rehabilitation period, the borrower's loan is removed from the alternative repayment plan and is placed on the standard repayment plan. In the FFEL Program, there is no designated "alternative repayment plan," and there is no statutory authority for the Department to create a repayment plan in the FFEL Program that is comparable to the alternative repayment plan. Therefore, in these negotiations we initially proposed requiring FFEL Program lenders to, after purchasing a rehabilitated FFEL Program loan from the guaranty agency, place the borrower on the standard repayment plan and simultaneously provide the borrower with a non-capitalizing, mandatory administrative reduced-payment forbearance with a payment equal to the payment amount that the borrower paid to rehabilitate the FFEL Program loan. During the mandatory administrative reduced payment forbearance, the FFEL Program lender would counsel the borrower on repayment options and, as in the Direct Loan Program, attempt to get the borrower to choose a new repayment plan. If the borrower did not make a choice after a period of time, the forbearance would be removed. Non-Federal negotiators expressed concerns about using forbearance as a tool to achieve the desired outcome of maintaining the rehabilitation payment amount for a period of time while giving the borrower an opportunity to choose a repayment plan. The non-Federal negotiators representing FFEL Program participants expressed concerns that forbearances may carry negative connotations, and are also generally associated with the borrower not making any payments instead of a reduced payment. These negotiators also raised operational concerns about treating a borrower as delinquent on the loan if the borrower did not make the payment under a reduced-payment forbearance. They contended that most FFEL Program lenders do not treat a borrower as delinquent if the borrower does not make a payment under a reduced-payment forbearance agreement, and, accordingly, non-Federal negotiators representing the FFEL Program contended that our proposal would have required significant modifications to servicing systems. We indicated that current regulations already provide the authority for granting a reduced-

payment forbearance under § 682.211(a) and a non-capitalizing administrative forbearance under § 682.211(f)(11) if it is necessary to provide additional time for a borrower to select a repayment plan option. Ultimately, the Department and non-Federal negotiators agreed that it would be preferable to adopt a less burdensome proposal. Therefore we are proposing to require guaranty agencies to provide the borrower with information on all of the repayment options available to the borrower after loan rehabilitation.

#### **Loan Rehabilitation (§ 682.405)**

*Statute:* Section 428F of the HEA was amended by the Bipartisan Budget Act of 2013 (Pub. L. 113-67) to, effective July 1, 2014, require a guaranty agency to assign an otherwise rehabilitated loan to the Secretary if it is unable to find a FFEL Program lender to purchase the loan, and to reduce the amount of collection costs that can be added to the balance of the loan upon rehabilitation from 18.5 percent to 16 percent.

*Current Regulations:* Current § 682.405 does not reflect the changes made to the HEA by the Bipartisan Budget Act of 2013.

*Proposed Regulations:* The proposed regulations would change § 682.405 to reduce the amount of collections costs that may be added to the balance of the loan upon rehabilitation from 18.5 percent to 16 percent of the unpaid principal and accrued interest at the time of the sale and to reflect that an otherwise rehabilitated FFEL Program loan must be assigned to the Secretary if the guaranty agency is unable to find a FFEL Program lender to purchase the loan.

*Reasons:* The FFEL Program loan rehabilitation regulations need to reflect the changes made to the HEA by the Bipartisan Budget Act of 2013.

#### **Income-Contingent Repayment Plans**

*Background:* On June 9, 2014, the President issued a Presidential Memorandum directing the Secretary of Education to propose regulations that would extend the benefits of the Pay As You Earn repayment plan to all eligible borrowers, regardless of when they borrowed, and that would include new features to target the plan to struggling borrowers.

To carry out the objective of the Presidential Memorandum, the Secretary initiated this rulemaking process to propose the creation of the new REPAYE plan as a type of Income-Contingent Repayment (ICR) plan in the Direct Loan Program under section 455(d)(1)(D) of the HEA. The proposed REPAYE plan would have many of the

same terms and conditions as the Pay As You Earn repayment plan. Terms and conditions of the REPAYE plan that differ from the Pay As You Earn repayment plan are explained below.

**Revised Pay As You Earn Repayment Plan (§§ 685.208, 685.209, 685.219, and 685.221)**

*Statute:* Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer Direct Loan borrowers (except parent PLUS borrowers) an ICR plan with varying annual repayment amounts based on the income of the borrower, for a period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e)(1) of the HEA authorizes the Secretary to establish ICR plan repayment schedules through regulations.

*Current Regulations:* Section 685.209 establishes the Pay As You Earn repayment plan and the ICR plan.

*Proposed Regulations:* The proposed regulations would add a new § 685.209(c), establishing the REPAYE plan as a third ICR plan under which a borrower's monthly payment amount is determined based on the borrower's adjusted gross income (AGI) and family size.

*Reasons:* The proposal to establish an income-contingent repayment plan available to all student Direct Loan borrowers is consistent with the President's Memorandum to the Secretary.

The non-Federal negotiators supported expanding the availability of the benefits of the Pay As You Earn repayment plan to all eligible Direct Loan borrowers regardless of when they borrowed.

However, the non-Federal negotiators initially did not support creating a third income-contingent repayment plan. They pointed out that, in addition to the two current income-contingent repayment plans, the IBR plan is also available for many borrowers. Instead of adding a new plan, these negotiators recommended modifications to the Pay As You Earn repayment plan to make it available to more borrowers, while allowing borrowers who are currently repaying under that plan to continue doing so under the existing Pay As You Earn repayment plan terms and conditions. They believed that this approach would be simpler for the Department and its loan servicers to administer, and simpler for schools to explain to borrowers.

The Department stated that it was committed to adding the REPAYE plan to the existing choices of income-driven repayment plans and believed that the current Pay As You Earn repayment

plan should be retained until proposed reforms can be implemented that would establish a single income-driven repayment plan targeted to struggling borrowers. While we appreciate the concerns raised by the negotiators, we do not believe that adding a third plan will significantly increase burden for servicers or confuse borrowers.

**Access to the REPAYE Plan**

*Statute:* Section 455(d)(1)(D) of the HEA authorizes the Secretary to promulgate regulations governing access of Direct Loan borrowers (except parent PLUS borrowers) to an income-contingent repayment plan.

*Current Regulations:* Under § 685.209(a), the Pay As You Earn repayment plan is limited to "eligible new borrowers." "Eligible new borrower" is defined in § 685.209(a)(1)(iii) as an individual who has no outstanding balance on a Direct Loan Program Loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007, and who receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011.

Under § 685.209(a)(2), an eligible new borrower may select the Pay As You Earn repayment plan only if he or she has a PFH, as defined in § 685.209(a)(1)(v).

*Proposed Regulations:* Proposed § 685.209(c)(2)(i) would allow a student Direct Loan borrower to select the REPAYE plan regardless of when the borrower received the Direct Loan, and regardless of whether the borrower has a PFH.

*Reasons:* Consistent with the President's Memorandum to the Secretary, the REPAYE plan would be available to any Direct Loan student borrower, regardless of when the borrower obtained his or her loans. The non-Federal negotiators were overwhelmingly supportive of not establishing any limitation on eligibility for the REPAYE plan based on when the borrower received his or her Direct Loans.

Initially, the Department proposed retaining PFH as an eligibility criterion for borrowers selecting the REPAYE plan. The Department's view was that the PFH eligibility criterion would help meet the President's objective of targeting the benefits of the new repayment plan to struggling borrowers. The non-Federal negotiators argued that other features of the REPAYE plan, such as the absence of a limit on the borrower's monthly payment amount,

would effectively target the benefits of the REPAYE plan to struggling borrowers. The non-Federal negotiators thought that establishing PFH as an entry requirement for the REPAYE plan would limit the number of borrowers who could repay their loans through the REPAYE plan, and might exclude some of the struggling borrowers that the REPAYE plan is intended to benefit, particularly some middle-income borrowers.

Some non-Federal negotiators suggested various alternative approaches to meet the President's goal, such as only counting years when a borrower is experiencing a PFH towards the 20- or 25-year forgiveness periods.

We found the arguments of the non-Federal negotiators persuasive, and agreed to withdraw our proposal to establish PFH as an eligibility criterion for the REPAYE plan.

Some non-Federal negotiators recommended expanding eligibility for the REPAYE plan to parent Direct PLUS Loan borrowers. However, the Department noted that the statutory authority governing all of the income-contingent repayment plans specifically excludes parent PLUS borrowers from repaying their PLUS loans under such plans.

*Treatment of Married Borrowers Under the REPAYE Plan Statute:* Section 455(e)(2) of the HEA requires the Secretary to establish income-contingent repayment amounts based on the AGI of the borrower and, if applicable, the borrower's spouse. Section 455(e)(4) of the HEA authorizes the Secretary to establish income-contingent repayment schedules through regulations.

*Current Regulations:* Under § 685.209(a)(2), the monthly payment for a borrower in the Pay As You Earn repayment plan is no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. Under § 685.209(a)(1)(i), for a married borrower filing separately, AGI includes only the borrower's income.

*Proposed Regulations:* Under proposed § 685.209(c)(2), the monthly payment for a borrower in the REPAYE plan would generally be no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The monthly payment amount may be adjusted, as discussed under the *Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income* section in this preamble.

Proposed § 685.209(c)(1)(i) would define the term “adjusted gross income” to mean the borrower’s adjusted gross income as reported to the IRS. For a married borrower who files a joint Federal tax return, AGI would include both the borrower’s and spouse’s income and would be used to calculate the monthly payment amount. For a married borrower who files a Federal tax return separately from his or her spouse, the AGI for each spouse would be combined to calculate the monthly payment amount. For a married borrower who files a tax return separately from his or her spouse, the AGI of the borrower’s spouse would not be required however if the borrower certifies that the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse. The borrower would provide the appropriate certification on a form approved by the Secretary.

The definition of “family size” in proposed § 685.209(c)(1)(iii) would be consistent with the definition of that term in the Pay As You Earn repayment plan regulations, with one exception. Family size would not include a married borrower’s spouse if the borrower filed a Federal income tax return separately from his or her spouse and the borrower is separated from his or her spouse, or if the borrower filed a separate Federal income tax return from his or her spouse and the borrower is unable to reasonably access the spouse’s income information.

*Reasons:* In the Pay As You Earn repayment plan, the IBR plan, and the ICR plan, the combined AGI for married borrowers is used if the couple files a joint Federal tax return. However, if the couple files separately, only the borrower’s AGI is used in the payment calculation. The REPAYE plan would treat married borrowers filing separately differently. We believe that the proposal to combine the AGI of the borrower and the spouse when they are filing separately, except in certain circumstances, would provide more equitable treatment for borrowers. In the current IDR plans, whether a spouse’s income is taken into consideration when determining the borrower’s payment amount is dependent on the tax filing decisions of the married couple. We believe that, for married borrowers, it is more equitable to count the spouse’s AGI even when the borrower and spouse file separate tax returns, except under the circumstances described earlier under *Proposed Regulations*.

The non-Federal negotiators generally agreed with this treatment of married

borrowers. However, they raised serious concerns about married borrowers who would be unable to obtain the AGI of their spouses. They raised the issue of borrowers who are separated from their spouses—either legally separated or simply living apart. The non-Federal negotiators argued that the requirement for a married borrower filing separately to provide his or her spouse’s AGI could prevent the borrower from participating in the REPAYE plan due to circumstances beyond the borrower’s control. For instance, they noted that borrowers who are victims of domestic abuse could be forced to attempt to obtain the AGI information from their abuser.

The Department agreed that exceptions should be made for borrowers who are separated from their spouses, or who are unable to obtain their spouse’s AGI for other reasons. We agreed to include a certification on the Income-Driven Repayment Plan Request application form that will allow borrowers to certify that they meet the conditions for this exception. This process would be modeled after the Department’s instructions to individuals completing the Free Application for Federal Student Aid.

The non-Federal negotiators also argued that the exception to providing a spouse’s AGI in cases of separated or abused spouses should be reflected in the definition of “family size.” The Department agreed with this position. If a borrower certifies on the Income-Driven Repayment Plan Request application that the borrower is separated from his or her spouse or is unable to reasonably obtain the spouse’s AGI information, the spouse would not be counted as part of the borrower’s family size for the REPAYE plan.

#### **Absence of a Cap on Monthly Payment Amounts Under the REPAYE Plan**

*Statute:* The HEA does not address capping the monthly payment amount for a loan repaid under an income-contingent repayment plan.

*Current Regulations:* Under § 685.209(a)(4)(i)(A), if a borrower making payments under the Pay As You Earn repayment plan no longer has a PFH, the Department recalculates the borrower’s monthly payment amount. The maximum monthly payment amount the borrower is required to repay as a result of this recalculation may not exceed the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower’s eligible loans outstanding at the time the borrower

began repayment under the Pay As You Earn repayment plan.

*Proposed Regulations:* Under proposed § 685.209(c)(2)(i)(A), the calculated monthly payment amount under the REPAYE plan would not be capped at the amount the borrower would have paid under a standard repayment plan based on a 10-year repayment period.

*Reasons:* The absence of a standard repayment plan cap for payments under the REPAYE plan would serve the President’s goal of ensuring that high-income, high-balance Direct Loan borrowers pay an equitable share of their earnings as their income rises. Non-Federal negotiators supported the proposal not to have a cap on the calculated monthly payment amount under the REPAYE plan, to better target the benefits of the REPAYE plan to struggling borrowers.

#### **Accrued Interest Charged Under the REPAYE Plan**

*Statute:* The HEA does not address interest charges under an income-contingent repayment plan.

*Current Regulations:* Under § 685.209(a)(2)(iii), if a borrower’s monthly payment amount under the Pay As You Earn repayment plan is not sufficient to pay the accrued interest on the borrower’s Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Department does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the Pay As You Earn repayment plan.

*Proposed Regulations:* Under proposed § 685.209(c)(2)(iii)(A), if a borrower’s monthly payment amount under the REPAYE plan is not sufficient to pay the accrued interest on the borrower’s loan, the Department would not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan under the REPAYE plan. Following this three-year period, the Department would charge the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

Under proposed § 685.209(c)(2)(iii)(C), the three-year period would not include any period during which the borrower receives an economic hardship deferment. The three-year period would include any prior period of repayment under the IBR

plan or the Pay As You Earn repayment plan, and, for a Direct Consolidation Loan, would include any period in which the underlying loans were repaid under the IBR plan or the Pay As You Earn repayment plan.

Under proposed § 685.209(c)(2)(iii)(B), if a borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Unsubsidized Loan, Direct PLUS Loan, or on the unsubsidized portion of a Direct Consolidation Loan, the Department would charge the borrower 50 percent of the remaining accrued interest. In addition, the Department would charge the borrower 50 percent of the remaining accrued interest on a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest under § 685.200(f)(3).

*Reasons:* The proposal to limit the amount of interest charged to a borrower in the REPAYE plan during periods when the calculated monthly payment is not sufficient to cover accrued interest is consistent with the goals of the President's Memorandum to the Secretary.

The non-Federal negotiators supported this proposal, but questioned how subsidized loans that have lost their interest subsidy due to the borrower exceeding the 150 percent Direct Subsidized Loan Limits would be handled. The Department determined that, in the case of a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for paying the interest, the Department would charge the borrower 50 percent of the remaining accrued interest that accrues after the effective date of the loss of interest subsidy.

Non-Federal negotiators also recommended allowing the period when interest is not charged on Direct Subsidized loans or the subsidized portion of a Consolidation Loan to be for any three years rather than for three consecutive years from the start date of the repayment period. Non-Federal negotiators also recommended decreasing the amount of interest that would be charged to a borrower after a three-year period from 50 percent of the remaining accrued interest to 10 percent of the remaining accrued interest. However, the Department determined that this proposal would significantly increase costs to the taxpayers.

### **Interest Capitalization Under the REPAYE Plan**

*Statute:* Section 455(e)(5) of the HEA authorizes the Secretary to promulgate regulations limiting the amount of interest that may be capitalized on loans repaid under an income-contingent repayment plan, and specifying the timing of capitalization under the plan.

*Current Regulations:* Under § 685.209(a)(2)(iv)(A), accrued interest is capitalized for a borrower in the Pay As You Earn repayment plan when the borrower is determined to no longer have a PFH, or at the time the borrower chooses to leave the Pay As You Earn repayment plan.

*Proposed Regulations:* Under proposed § 685.209(c)(2)(iv), in the REPAYE plan, accrued interest would be capitalized when the Secretary determines that a borrower does not have a PFH or at the time a borrower leaves the REPAYE plan. The amount of accrued interest capitalized when a borrower is determined to not have a PFH would be limited to 10 percent of the original principal balance at the time the borrower entered repayment under the REPAYE plan. After the amount of accrued interest reaches this limit, interest would continue to accrue but would not be capitalized while the borrower remains on the REPAYE plan.

Proposed § 685.209(c)(1)(iv) would define the term "partial financial hardship" to mean a circumstance in which the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's AGI or, if applicable, the AGI of the borrower and the borrower's spouse, and 150 percent of the poverty guideline for the borrower's family size.

*Reasons:* Although the Department is not proposing to include PFH as an eligibility criterion for the REPAYE plan, PFH would be used for interest capitalization purposes. Under the proposed regulations, the Department would determine each year if the borrower has a PFH. If a borrower who had a PFH during one year does not have a PFH the following year, accrued interest would be capitalized in accordance with § 685.209(c)(2)(iv).

The non-Federal negotiators supported the proposal to limit the amount of interest that may be capitalized under the REPAYE plan.

Some non-Federal negotiators recommended that the Department eliminate interest capitalization entirely. However, this proposal would significantly increase the costs to the taxpayer of the REPAYE plan. In addition, applying the interest capitalization limitation only to borrowers with a PFH would help to target the benefits of the REPAYE plan to the neediest borrowers.

### **Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income**

*Statute:* The HEA does not address the treatment of borrowers repaying under an income-contingent repayment plan who do not provide the annual income information required by the Secretary to determine the borrower's monthly payment amount.

*Current Regulations:* Under § 685.209(a)(5)(vii), if a borrower who is repaying under the Pay As You Earn repayment plan remains on the plan for a subsequent year, but the Secretary does not receive the income information needed to calculate the borrower's new monthly payment amount within 10 days of the annual deadline provided to the borrower in the notice described in § 685.209(a)(5)(iii), the Secretary recalculates the borrower's monthly payment amount and requires the borrower to pay the monthly amount the borrower would have paid under a standard repayment plan with a 10-year repayment period, based on the borrower's loan balance as of the time the borrower began repayment under the Pay As You Earn repayment plan. However, the Secretary does not recalculate the borrower's monthly payment amount if the Secretary receives the required income documentation more than 10 days after the annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual repayment period as described in § 685.209(a)(5)(ii)(A). If the Secretary recalculates the borrower's monthly payment amount, the repayment period based on that amount may exceed 10 years.

Current § 685.209(a)(5)(ix) provides that if the Secretary receives the required income documentation more than 10 days after the specified annual deadline and the borrower's payment amount is recalculated as described earlier, the Secretary uses the income documentation to determine the borrower's new Pay As You Earn repayment plan monthly payment amount. If the new payment amount is \$0.00 or is less than the borrower's

previously calculated income-based payment amount, the Secretary applies a forbearance with respect to any payments that are overdue or that would be overdue at the time the new Pay As You Earn repayment plan monthly payment amount is determined. Interest that accrues during the portion of the forbearance period that occurred prior to the end of the borrower's prior annual payment period is not capitalized.

*Proposed Regulations:* Under proposed § 685.209(c)(4)(vi), if a borrower who is repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the income documentation needed to determine the borrower's new monthly payment amount within 10 days of the specified annual deadline provided to the borrower in the notice described in proposed § 685.209(c)(4)(iii), the Secretary would remove the borrower from the REPAYE plan and place the borrower on an alternative repayment plan. Under this alternative repayment plan, the borrower's required monthly payment would be the amount necessary to repay the borrower's loan in full within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end of the 20-year or 25-year period described in proposed § 685.209(c)(5)(i) and (ii), whichever is earlier. The Secretary would not take these actions if the Secretary receives the required income documentation more than 10 days after the annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual repayment period as described in § 685.209(c)(4)(ii)(A).

Under proposed § 685.209(c)(4)(vii)(A) through (C), if the Secretary places the borrower on an alternative repayment plan, the Secretary would send the borrower a written notice informing the borrower that he or she has been placed on an alternative repayment plan, that the borrower's monthly payment has been recalculated in accordance with proposed § 685.209(c)(4)(vi), and that the borrower may change to a different repayment plan in accordance with § 685.210(b). The notice would also explain the conditions, as described in proposed § 685.209(c)(4)(vii)(D) through (G), under which a borrower who has been removed from the REPAYE plan because the borrower did not provide required income documentation within 10 days of the specified annual deadline may return to the REPAYE plan.

Under proposed § 685.209(c)(vii)(D), a borrower who has been removed from

the REPAYE plan because the borrower did not provide income documentation to the Secretary in accordance with proposed § 685.209(c)(4)(vi), or a borrower who chose to leave the REPAYE plan and repay under a different repayment plan in accordance with proposed § 685.209(c)(2)(vi), may return to the REPAYE plan if he or she provides the income documentation necessary for the Secretary to calculate both the borrower's new REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan.

Proposed § 685.209(c)(4)(vii)(E) would provide that if a borrower qualifies to return to the REPAYE plan by submitting the income documentation described in proposed § 685.209(c)(vii)(D), and the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan are less than the total amount of the payments the borrower would have been required to make under the REPAYE plan during that period, the Secretary would adjust the borrower's REPAYE plan monthly payment to ensure that the difference between the two amounts is paid in full by the end of the 20-year or 25-year period described in proposed § 685.209(c)(5)(i) and (ii).

Under proposed § 685.209(c)(4)(vii)(F), if a borrower who was removed from the REPAYE plan and placed on the alternative repayment plan described in proposed § 685.209(c)(4)(vi) later returns to the REPAYE plan or changes to the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), or the income-based repayment plan under § 685.221, any payments the borrower made under the alternative repayment plan will count toward loan forgiveness under the REPAYE plan or the other repayment plans under § 685.209(a), § 685.209(b), or § 685.221.

Finally, proposed § 685.209(c)(4)(vii)(G) would provide that any payments made under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) would not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program under § 685.219. To reflect this provision, the proposed regulations would also make a conforming change in § 685.219(c)(1)(iv)(D) to provide that

payments made under an alternative repayment plan do not count toward the required 120 monthly payments for public service loan forgiveness.

*Reasons:* In the absence of a process that allows borrowers to provide consent to access their income information for multiple years, the proposed approach for handling borrowers who do not provide required income documentation by the annual deadline serves two important purposes. First, the proposed regulations should provide an incentive for borrowers to comply with the annual income documentation requirement in a timely manner. At the same time, allowing payments made under the alternative repayment plan to count toward REPAYE plan loan forgiveness if the borrower later returns to the REPAYE plan ensures that borrowers who do not submit income documentation by the annual deadline but later correct the problem are not unduly penalized.

Second, the proposed approach provides a disincentive for borrowers who might intentionally withhold updated income information when there is a significant increase in their income so as to avoid a corresponding increase in their calculated monthly payment amount. The proposed regulations would ensure that, if such borrowers wish to return to the REPAYE plan, they must repay the difference between the amount they were required to pay during the time they were in repayment under the alternative repayment plan or any other repayment plan and the amount they would have been required to pay during that same period under the REPAYE plan if they had provided the required updated income documentation. This is consistent with the Department's goal of targeting the REPAYE plan to the neediest borrowers by ensuring that the required monthly payment amount for a borrower whose income increases over time will always be adjusted upward as the borrower's income increases.

During the negotiations, the Department initially presented this issue as a topic for discussion and asked the non-Federal negotiators to suggest possible approaches. The non-Federal negotiators suggested various options for handling borrowers who do not provide required income documentation, including: Setting the borrower's payment at a fixed payment amount that would ensure repayment of the loan in full over the remaining balance of the borrower's 20-year or 25-year REPAYE plan repayment term; increasing the borrower's payment amount based on a percentage linked to the remaining amount of time under the

20-year or 25-year repayment term; increasing the payment amount based on projected increases in the borrower's income; and requiring the borrower to pay an amount that is no less than the standard plan payment amount. Other recommendations from the non-Federal negotiators included extending the period during which a borrower can submit income documentation from 10 days after the annual deadline to 30 to 60 days after the deadline, and establishing an appeal process for borrowers who miss the income submission deadline.

In response to these recommendations, the Department noted that some of the suggested approaches would effectively establish a cap on the maximum amount a borrower would be required to pay, similar to the provision of the Pay As You Earn repayment plan that limits the monthly amount a borrower is required to pay to no more than the amount the borrower would be required to pay under the 10-year standard repayment plan. Such an approach would be contrary to the goal of targeting the REPAYE plan to the neediest borrowers by ensuring that the calculated monthly payment amount is always a percentage of the borrower's income, so that borrowers with higher earnings will have a correspondingly higher monthly payment amount.

The Department also declined to consider the recommendations to extend the time after the annual deadline during which a borrower may submit income documentation, or establish an appeals process for borrowers who do not submit income documentation by the deadline. The Department noted that the proposed regulations related to the annual deadline for submitting income documentation are the same as the corresponding regulations for the Pay As You Earn repayment plan that were developed through negotiated rulemaking after extensive discussion. Because those regulations have been in effect for less than two years, the Department did not believe there was sufficient evidence to conclude that the existing timeframes for borrowers to submit income documentation should be modified. In addition, the corresponding Pay As You Earn repayment plan regulations do not provide an appeal process for borrowers who miss the annual deadline, and the Department did not believe that establishing an appeal process for the REPAYE plan was warranted.

However, the Department noted that we are conducting a pilot program to determine if there may be more effective

ways to communicate the annual income documentation requirement to borrowers.

At the third negotiating session the Department presented the proposed regulations for handling borrowers who do not provide the required annual income documentation. The Department also explained to the non-Federal negotiators an alternative approach that the Department had initially considered and asked for comments on the two approaches. Under the alternative approach, a borrower who did not provide the required income documentation within 10 days of the specified annual deadline would be removed from the REPAYE plan and placed on an alternative repayment plan under which the required monthly payment amount would be the amount required to repay the borrower's remaining loan balance within 10 years from the date the borrower began repayment under the alternative repayment plan. The borrower could return to the REPAYE plan if he or she provided the required income documentation within 90 days of having been placed on the alternative repayment plan, or could choose a different repayment plan during that period. If the borrower did not provide the required income documentation or change to a different repayment plan within the 90-day period, the borrower would be removed from the alternative repayment plan and placed on the standard repayment plan. During the discussion, the non-Federal negotiators generally expressed the view that the Department's final proposal for handling borrowers who do not provide income documentation was more fair to borrowers than the alternative approach that the Department had initially considered.

One non-Federal negotiator asked why the proposed REPAYE plan regulations did not include a forbearance provision comparable to the provision in § 685.209(a)(5)(ix), which provides that, in the Pay As You Earn repayment plan, the Department applies a forbearance to cover any payments that are past due or that would be overdue when the Secretary receives income documentation from the borrower more than 10 days after the specified annual deadline, and the new calculated payment amount is \$0.00 or is less than the borrower's previously calculated Pay As You Earn repayment plan payment amount. The Department explained that a comparable provision is not required in the proposed regulations for the REPAYE plan, because the administrative forbearance provision in § 685.205(b) would cover

this situation. Consistent with the FFEL Program administrative forbearance provision in § 682.211(f)(14), the Secretary would grant forbearance for a period of delinquency that exists at the time a borrower makes a change to a different repayment plan. The Department noted that under the Pay As You Earn repayment plan, a borrower who does not provide income documentation by the annual deadline is not actually removed from the Pay As You Earn repayment plan, and would not be covered by the administrative forbearance provision in § 685.205(b). Therefore, a special forbearance provision was added to the Pay As You Earn repayment plan regulations. In contrast, the proposed REPAYE plan regulations would remove a borrower from the plan and place the borrower on an alternative repayment plan if he or she fails to provide the required income documentation by the specified annual deadline. If the borrower later meets the requirements for returning to the REPAYE plan, the Secretary would grant an administrative forbearance under § 685.205(b) to cover any payments that are past due or that would be overdue at the time the borrower changes back to the REPAYE plan.

#### **Loan Forgiveness Under the REPAYE Plan**

*Statute:* Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer an income-contingent repayment plan with varying annual repayment amounts based on the borrower's income, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years.

*Current Regulations:* Under § 685.209(a)(6), a borrower repaying under the Pay As You Earn repayment plan may qualify for forgiveness of any remaining loan balance after 20 years of qualifying monthly payments and periods of economic hardship deferment. Qualifying monthly payments include payments made under the Pay As You Earn repayment plan, the income-contingent repayment plan under § 685.209(b), the income-based repayment plan under § 685.221, or the standard repayment plan with a 10-year repayment period under § 685.208(b), as well as payments made under any other Direct Loan repayment plan that were not less than the amount required under the standard repayment plan with a 10-year repayment period.

*Proposed Regulations:* Under proposed § 685.209(c)(5), a borrower repaying under the REPAYE plan would qualify for forgiveness of any remaining

loan balance after either 20 years or 25 years of qualifying monthly payments.

Under proposed § 685.209(c)(5)(ii)(A), a borrower would qualify for forgiveness after 20 years if the loans being repaid under the REPAYE plan include only loans the borrower received to pay for undergraduate study or a consolidation loan that repaid only loans the borrower received to pay for undergraduate study.

Under proposed § 685.209(c)(5)(ii)(B), a borrower would qualify for forgiveness after 25 years if the loans being repaid under the REPAYE plan include a loan the borrower received to pay for graduate or professional study or a consolidation loan that repaid a loan received to pay for graduate or professional study.

Proposed § 685.209(c)(5)(iv) would define a “qualifying monthly payment” as any payment made under the REPAYE plan, the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), the income-based repayment plan under § 685.221, or the standard repayment plan with a 10-year repayment period under § 685.208(b), or a payment made under any other Direct Loan repayment plan if the amount of the payment was not less than the amount required under the standard repayment plan with a 10-year repayment period. The proposed definition of “qualifying monthly payment” would also include any payment made by a borrower under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) and (vii) before the borrower changed to one of the income-contingent repayment plans under § 685.209 or the income-based repayment plan under § 685.221, or any month during which the borrower was not required to make a payment due to receiving an economic hardship deferment.

The proposed regulations would also make conforming changes to the regulations for the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), and the income-based repayment plan under § 685.221, to provide that a qualifying monthly payment for purposes of loan forgiveness under those plans would include a monthly payment made under the REPAYE plan or a monthly payment made by a borrower under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) and (vii) before the borrower changed to one of the repayment plans under § 685.209 or § 685.221.

*Reasons:* The Department initially proposed that a borrower would qualify for forgiveness after 20 years if the

borrower's total outstanding balance on loans being repaid under the REPAYE plan was \$57,500 or less at the time the borrower initially began repayment under the plan, and would qualify for forgiveness after 25 years if the total outstanding balance on loans being repaid under the REPAYE plan was more than \$57,500 at the time the borrower initially began repayment under the plan. The rationale for this approach was that borrowers with higher loan balances should be expected to repay over a longer period of time before receiving forgiveness of any remaining loan balance. The \$57,500 amount is the statutory aggregate loan limit for an independent undergraduate student.

The non-Federal negotiators strongly objected to the Department's initial approach to this issue. One of the negotiators' major concerns was that basing the determination of the 20-year or 25-year period on a specific dollar amount of outstanding loan would result in a “cliff effect,” whereby a borrower who had as little as \$1.00 in outstanding loan debt over the specified amount would have to repay for an additional five years before qualifying for loan forgiveness. Some non-Federal negotiators also suggested that the Department's proposed approach would be complicated to explain to borrowers, and that it would be difficult for borrowers to know at the time they were taking out their loans whether they would have to repay for 20 years or 25 years before qualifying for forgiveness.

The non-Federal negotiators also noted that, under the Department's proposal, it was unclear what would happen if at some point in the future the \$57,500 independent undergraduate aggregate loan limit was increased. They noted further that the original proposal did not make it clear how the repayment period would be determined for a borrower who initially entered repayment under the REPAYE plan with less than \$57,500 in outstanding loan debt, but later returned to school and received additional loans that increased the borrower's loan debt to an amount in excess of \$57,500, nor did it clarify how the repayment period would be determined for a borrower who had previously begun repaying loans under the REPAYE plan and later consolidated those loans.

Some non-Federal negotiators suggested other approaches for determining the repayment period, such as increasing the length of the repayment period in one-month increments for each \$1,000 in loan debt beyond a specified amount, or providing a 20-year repayment period for all loans

received for undergraduate study and a 25-year period for all loans received for graduate or professional study.

The Department considered the non-Federal negotiators' proposal to establish a 20-year repayment period for all loans received for undergraduate study and a 25-year period for all loans received for graduate or professional study, but determined that the costs to the taxpayers would be unacceptably high. Some non-Federal negotiators then proposed a 20-year repayment period if all of a borrower's loans being repaid under the REPAYE plan were obtained for undergraduate study, and a 25-year repayment period if one or more of a borrower's loans was obtained for graduate or professional study. The non-Federal negotiators believed that the benefits of the suggested alternative in terms of simplicity and avoiding the potential “cliff effect” associated with the Department's original proposal would outweigh any potential disadvantages. Although some of the other non-Federal negotiators had reservations about setting the repayment period at 25 years for any borrower with at least one loan received for graduate or professional study, and expressed concern that this may discourage some students from pursuing graduate degrees, all of the non-Federal negotiators eventually supported this approach. Some negotiators said that they would support the proposal to set the repayment period at 25 years for borrowers who obtained one or more loans for graduate or professional study because graduate and professional students have the option of pursuing public service loan forgiveness.

A non-Federal negotiator asked if a borrower who received loans for both undergraduate and graduate study could qualify for forgiveness after 20 years by repaying only the undergraduate loans under the REPAYE plan and repaying the graduate loans under a different plan, such as the Pay As You Earn repayment plan. The Department noted that the proposed regulations for the REPAYE plan do not change the current regulation 34 CFR 685.208(a)(4) that requires all Direct Loans obtained by a borrower to be repaid together under the same repayment plan, except that a borrower with a parent Direct PLUS Loan or Direct Consolidation Loan that is not eligible for repayment under an income-driven repayment plan may repay the ineligible loan separately from other loans obtained by the borrower.

After carefully considering the alternative suggested by the non-Federal negotiators, the Department agreed to incorporate this approach in the proposed regulations, with the addition

of language to clarify the treatment of borrowers with consolidation loans, as explained earlier under *Proposed Regulations*. In response to a question from the non-Federal negotiators, the Department also clarified that Direct Loans received by a borrower for preparatory coursework or teacher certification coursework under 34 CFR 685.203(a)(6) or (7) would be considered loans obtained for undergraduate study. The approach suggested by the non-Federal negotiators balances our interest in having borrowers with higher loan balances make payments over a longer period of time before receiving loan forgiveness with our interest in having a forgiveness provision that is easy for borrowers to understand.

#### **Lump Sum Payments Made Under Department of Defense Student Loan Repayment Programs for the Purpose of Public Service Loan Forgiveness**

*Statute:* Section 455(m) of the HEA provides the statutory framework for the Public Service Loan Forgiveness Program, including the requirement that a borrower seeking loan forgiveness under this section must make 120 monthly payments and have been in public service during that 120-month period. The statute provides that after the conclusion of the 120-month period, the Secretary of Education will cancel the obligation to repay the balance of principal and interest due as of the time of the cancellation.

*Current Regulations:* Section 685.219(c)(2) of the current regulations provides that, for purposes of the Public Service Loan Forgiveness Program, lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service are applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.

*Proposed Regulations:* The proposed regulations would amend § 685.219(c)(1)(iii), (c)(2), and (c)(3) to provide the same treatment to lump sum payments made on behalf of a borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, and 2174, or any other student loan repayment programs administered by the Department of Defense.

*Reasons:* A non-Federal negotiator proposed this change to provide equity to those borrowers who are seeking public service loan forgiveness and whose student loan payments are being made directly through lump sum payments by the Department of Defense.

The Department agrees that providing equitable treatment to such payments is an important goal.

#### **Executive Orders 12866 and 13563**

#### **Regulatory Impact Analysis**

##### **Introduction**

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 proposed regulatory action would have an annual effect on the economy of more than \$100 million because the availability of the REPAYE plan is estimated to cost approximately \$15.3 billion over loan cohorts from 1994 to 2025. Therefore, this proposed 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 determined that the benefits would justify the costs.

We have also reviewed these 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 proposed regulations only on a reasoned determination that their benefits would 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 proposed 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.

This regulatory impact analysis is divided into six sections. The “Need for Regulatory Action” section discusses why amending the current regulations is necessary.

The “Summary of Proposed Regulations” briefly describes the changes the Department is proposing in these regulations.

The “Discussion of Costs and Benefits” section considers the cost and

benefit implications of these regulations for student loan borrowers, the public, and the Federal Government.

Under “Net Budget Impacts,” the Department presents its estimate that the proposed regulations would have a significant net budget impact on the Federal Government of approximately \$15.3 billion, \$8.3 billion of which relates to existing loan cohorts from 1994 to 2015 and \$7 billion relates to loan cohorts from 2016 to 2025 (loans that will be made in the future).

In “Alternatives Considered,” we describe other approaches the Department considered for key provisions of the proposed regulations, including basing the determination of whether a borrower could qualify for loan forgiveness after 20 or 25 years on the amount borrowed, the treatment of married borrowers who file taxes separately, and the appropriate handling of borrowers who do not certify their income as required to remain in the REPAYE plan.

Finally, the “Regulatory Flexibility Act Certification” considers the effect of the proposed regulations on small entities.

#### *Need for Regulatory Action*

The proposed regulations address several topics related to the administration title IV, HEA student aid programs and benefits and options for borrowers. The changes to the PRI appeals process to allow more timely challenges and appeals would provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. This increased certainty could encourage some institutions, especially community colleges with low borrowing rates, to continue participating in the title IV loan programs.

In the proposed regulations, the Department seeks to reduce the burden on active duty servicemembers and help ensure that those eligible for an interest rate reduction receive it.

The Department has also developed these proposed regulations in response to a Presidential Memorandum released on June 9, 2014, for the Secretary of Treasury and the Secretary of Education with the subject line, “Helping

Struggling Federal Student Loan Borrowers Manage Their Debt.”<sup>1</sup>

In the memorandum, the President discussed the importance of a college education and the Administration’s efforts to maintain affordability of a college education and expressed concern that many borrowers were unable to cap their student loan payments at 10 percent of their discretionary income under the current regulations.

The President also instructed the Secretary to propose regulations that would allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income. The Secretary was instructed to target this option towards borrowers who would otherwise struggle to repay their loans.

The Department is responsible for administration of the Federal student loan programs authorized by title IV of the HEA, and as a result, periodically reviews and revises program regulations to ensure that the programs operate efficiently and in line with the statutory rules set by Congress.

In 2012, the Department of Education established a new income-contingent repayment plan called the Pay As You Earn repayment plan. The Department developed this plan in response to a growing concern about the growth of student loan debt and potential long-term economic consequences for student borrowers and the country. As a result, under the Pay As You Earn plan, loan payments are limited to 10 percent of the borrower’s discretionary income and any remaining balance is forgiven after 20 years of qualifying payments for borrowers who first borrowed on or after October 1, 2007, with a loan disbursement made on or after October 1, 2011.

However, while the original PAYE repayment plan offered relief to qualifying recent borrowers, it did not help the millions of existing borrowers with student loan debt. As the concerns about American student loan debt burdens continue to build, the Department seeks to offer payment relief to a larger swath of borrowers than is currently possible under the PAYE repayment plan. To achieve that goal,

<sup>1</sup> [www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments](http://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments).

the Department has proposed the REPAYE plan. This plan will offer borrowers many of the same benefits as the original PAYE repayment plan, regardless of when they originally borrowed.

As noted in the Consumer Finance Protection Bureau’s 2013 report, “Public Service & Student Debt: Analysis of Existing Benefits and Options for Public Service Organizations,” the current process of applying “lump sum payments” made through student loan repayment programs administered by the Department of Defense can be detrimental to the overall value of the eligible borrower’s benefits.<sup>2</sup> When such payments are counted as one single payment in lieu of the borrower being given credit for the equivalent number of monthly payments covered by the amount, it does not count toward the 120 qualifying payments required for public service loan forgiveness.

In these proposed regulations, the Department would count lump sum payments made by the Department of Defense under certain loan repayment programs towards public service loan forgiveness.

#### **Summary of Proposed Regulations**

The Department proposes to establish a new IDR plan that would be available to all borrowers; allow for PRI challenges or appeals to CDRs between 30 and 40 percent within the three most recent fiscal years; reduce the burden on active duty servicemembers who are entitled to an interest rate reduction under the SCRA by requiring servicers to use the authoritative Department of Defense database or alternative evidence provided by the borrower on a form developed by the Secretary; treat lump sum payments from Department of Defense loan repayment programs as the equivalent monthly payments for public service loan forgiveness; and require guaranty agencies to provide information to borrowers rehabilitating defaulted loans to help ensure that borrowers understand the available repayment options upon successfully completing the loan rehabilitation. The table below briefly summarizes the major provisions of the proposed regulations.

<sup>2</sup> Available at: [http://files.consumerfinance.gov/f/201308\\_cfpb\\_public-service-and-student-debt.pdf](http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf).

TABLE 1—SUMMARY OF PROPOSED REGULATIONS

Provision	Reg section	Description of provision
Participation rate index challenges and appeals.	§§ 668.16, 668.204, 668.208, and 668.214.	An institution may bring a timely PRI challenge or appeal in any year that its draft or official CDR is greater than or equal to 30 percent and less than or equal to 40 percent for any of the three most recent fiscal years, not just in the year that the institution faces sanctions. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent.
SCRA .....	§§ 682.202, 682.208, 682.410, 685.202.	Loan holders must proactively consult the authoritative Department of Defense DMDC database to apply the SCRA interest rate limit of six percent. Allows borrowers to supply alternative evidence of active duty service to demonstrate eligibility for the SCRA interest rate limit through a form developed by the Secretary when the borrower believes the database is inaccurate or incomplete.
Loan rehabilitation .....	§ 682.405 .....	Makes changes to reflect statutory change in maximum collection costs that may be added to the balance of a loan upon rehabilitation from 18.5 percent to 16 percent and to reflect the requirement that GAs assign a loan to the Secretary if it qualifies for rehabilitation and the GA cannot find a buyer. Requires guaranty agencies to provide information to borrowers about their repayment options during and after loan rehabilitation.

**REPAYE Plan**

Eligibility .....	§ 685.209 .....	Available to all Direct Loan student borrowers.
Repayment period .....	§ 685.209 .....	For a borrower who has loans for undergraduate education only, the balance of the loans will be forgiven after 20 years of qualifying payments. For a borrower who has at least one loan for graduate study, the balance of the loans will be forgiven after 25 years of qualifying payments. Payments made under the alternative repayment plan would count towards forgiveness under income-driven plans if the borrower returns to such a plan, but not towards public service loan forgiveness.
Treatment of married borrowers' income for determining payment.	§ 685.209 .....	For married borrowers filing jointly, AGI includes the borrower's and spouse's income. For married borrowers filing separately, the spouse's income would be included unless the borrower certifies that the borrower is separated from the spouse or is unable to reasonably access the spouse's income information. In the case of separation or inability to access income information, the family size for the payment calculation would not include the spouse.
Treatment of borrowers who do not provide income documentation annually.	§ 685.209 .....	Borrowers who do not supply income information can choose to leave the REPAYE plan and select another repayment plan for which they are eligible. Borrowers who do not supply income information within 10 days of deadline are placed on the alternative repayment plan with the monthly payment equaling the amount necessary to repay the loan in full within 10 years or the end of the 20-year or 25-year period applicable to the borrower under the REPAYE plan, whichever is earlier. The borrower may return to the REPAYE plan if income documentation is provided for the time the borrower was on a different repayment plan. Borrowers whose income increased during that period would be required to make an adjusted monthly payment so the difference between what they paid under the other plan and would have paid under the REPAYE plan is paid in full by the end of the 20-year or 25-year period.
Interest accrual in periods of negative amortization.	§ 685.209 .....	For borrowers in negative amortization whose payments are not sufficient to pay the accrued interest in that period, the Department will: <ul style="list-style-type: none"> <li>• In the first three years of repayment, not charge the remaining interest on Direct Subsidized Loans, with any periods of economic hardship deferment not included in the three year period; and</li> <li>• For Direct Unsubsidized Loans, Direct PLUS loans to graduate or professional students, the unsubsidized portion of Direct Consolidation Loans, Direct Subsidized and subsidized portions of Direct Consolidation loans after the three-year period, charge the borrower 50 percent of the remaining accrued interest for the period.</li> </ul>
Treatment of Department of Defense lump sum payments for public service loan forgiveness.	§ 685.219 .....	Lump sum payments made under Department of Defense loan repayment programs would be applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.

### Discussion of Costs and Benefits

The proposed regulations in large part affect loan repayment options and processes, so they would largely affect student borrowers, the Federal Government, and loan servicers. The changes to the PRI appeal process affect institutions and the Federal Government. The following discussion describes the costs and benefits of the proposed regulations by key topic area.

#### REPAYE Plan

The proposed REPAYE plan would make available to borrowers an IDR plan with payments based on 10 percent of discretionary income and, for borrowers with only undergraduate loans, a 20-year repayment period to all borrowers with loans in repayment. In contrast, under the current regulations, only borrowers who received loans during specific time periods are eligible for an IDR plan with these benefits, and no borrowers who had loans before FY 2008 can take advantage of those plans. Additionally, the proposed REPAYE plan would not include the PFH requirement that is part of the Pay As You Earn repayment plan for the purpose of eligibility, further increasing access to IDR plans. The extension of the plan to a broader pool of borrowers would be a primary benefit of the REPAYE plan and would give student borrowers another tool to manage their loan payments. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, we estimate that six million borrowers would be eligible for the REPAYE plan, although not all of them would necessarily choose to enroll. Borrowers repaying under the REPAYE plan would also benefit from the plan's 50 percent reduction in the accrual of interest for borrowers in negative amortization. This would limit the rate at which loan balances increase and the amount ultimately owed.

In offering this increased access, while targeting the plan to the neediest borrowers, some features were changed from those in the PAYE repayment plan. In particular, there is no cap on the amount of the borrower's payment, so borrowers whose income results in a payment greater than it would be under standard repayment would have to pay the higher amount to maintain eligibility for future loan forgiveness. Borrowers who leave the REPAYE plan because they did not meet the requirement to annually recertify their income may reenter the REPAYE plan at any time, but must provide the income documentation for the relevant period and make additional payments if they

would have paid more under the REPAYE plan.

To the extent the REPAYE plan reduces payments collected from borrowers, there is a cost to the Federal Government. This is described in greater detail in the Net Budget Impacts section of this analysis.

#### Other Provisions

The proposed regulatory changes to require loan holders to proactively use the Department of Defense's DMDC database and to allow borrowers to supply alternative evidence of active duty service through a form developed by the Secretary would benefit borrowers who are or have been in military service, reducing the burden on active duty servicemembers in obtaining application of the SCRA interest rate limit to their Federal student loans. These proposed changes are intended to ensure the six percent interest rate limit is applied for the correct time period and that borrowers receive the benefit to which they are entitled.

Similarly, the treatment of lump sum payments made by the Department of Defense on behalf of borrowers as the equivalent monthly payments for the purpose of public service loan forgiveness would ensure that borrowers who are otherwise entitled to public service loan forgiveness do not fail to qualify based on the way the Department of Defense loan repayment programs are administered. Based on NSLDS data, the Department estimates that less than one percent of student loan borrowers are affected by this issue.

The proposed regulations requiring guaranty agencies to provide information to FFEL Program borrowers transitioning from rehabilitating defaulted loans to loan repayment would benefit borrowers who struggle with repayment and could help to prevent those borrowers from redefaulting. The proposed regulations require guaranty agencies to inform borrowers about different repayment plan options and how the borrower can choose a plan. This assistance may help borrowers avoid additional negative credit events and allow them to enroll in a repayment plan that supports ongoing repayment of their loans.

Finally, the proposed changes to the PRI challenges and appeals process would permit some institutions to challenge their rate in any year, not just the one that could result in a loss of eligibility. Some non-Federal negotiators and community college advocates suggested these changes would encourage more community colleges to participate in the title IV

loan programs, thus giving students additional options to finance their education at those institutions.

The proposed regulations would have administrative costs for guaranty agencies and loan holders that are detailed in the *Paperwork Reduction Act* section of this preamble. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, the Department does not expect that these proposed regulations would have a significant net budget impact.

#### Net Budget Impacts

The proposed regulations are estimated to have a net budget impact of \$15.3 billion, of which \$8.3 billion is a modification for existing cohorts from 1994 to 2015 and \$7 billion is related to future cohorts from 2016 to 2025. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

These estimates were developed using the 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 Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. In developing the following Accounting Statement, the Department also consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these proposed regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash

flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: For-profit institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

**REPAYE Plan**

The establishment of the REPAYE plan, which extends a plan with payments based on 10 percent of the borrower's discretionary income to borrowers with no restriction on when they borrowed, would have a major budget impact. The proposed REPAYE plan would differ from the existing Pay As You Earn repayment plan in several ways to better target the plan to the neediest borrowers and to reduce the costs in some areas to allow for the extension of the plan to additional borrowers. Of the provisions described in the *Summary of the Proposed Regulations*, the lack of a cap on the borrower's payment amount, the requirement for 25 years of payments to have loan forgiveness for any borrower with debt for graduate education, and the treatment of married borrowers who file taxes separately are important provisions to reduce the costs of the REPAYE plan, while the reduced interest accrual for borrowers in negative amortization and opening the

plan to all student borrowers are significant drivers of the estimated costs. The availability of the proposed REPAYE plan, with its extension of reduced income percentage and shorter forgiveness period to earlier cohorts of borrowers, no standard repayment cap, limited accrual of interest for borrowers in negative amortization, 20-years forgiveness period for undergraduate debt and 25-year forgiveness period for graduate debt, process for handling borrowers who do not recertify their income annually, and treatment of married borrowers filing separately, is estimated to cost \$15.3 billion.

To establish the baseline and to evaluate proposals related to IDR plans, the Department uses a micro-simulation model consisting of borrower-level data obtained by merging data on student loan borrowers derived from a sample of the National Student Loan Data System (NSLDS) with income tax data from the IRS. Interest and principal payments are calculated according to the regulations governing the IDR plans, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation; death, disability, or bankruptcy discharges; or public service loan forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-driven repayment to generate estimates of Federal costs.

In evaluating the costs of the proposed REPAYE plan, the Department assumes that, if possible, borrowers

would elect the most beneficial plan for which they are eligible. Therefore, most borrowers who would be eligible for the PAYE repayment plan or the Income Based Repayment (IBR) Plan as provided for new borrowers after July 1, 2014 would stay in those plans. Many of the borrowers who would choose the REPAYE plan would be from earlier cohorts who were ineligible for the PAYE repayment plan or the IBR Plan for new borrowers after July 1, 2014. Based on this, the Department estimates that for cohorts from 1994 to 2025, approximately six million borrowers would be eligible for the REPAYE plan. We estimate that approximately 2 million borrowers would choose the REPAYE plan.

When the assumption for loan forgiveness is increased as a result of a policy, the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a net present value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the REPAYE plan is estimated to cost approximately \$15.3 billion, of which \$8.3 billion is a modification for existing cohorts from 1994 to 2015 and \$7 billion is related to future cohorts from 2016 to 2025 as shown in Table 2.

TABLE 2—ESTIMATED OUTLAYS FOR COHORTS 2015–2025

Cohorts	MOD (1994–2015)	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
Outlays .....	.....	1,100	1,007	901	780	681	612	542	498	477	416	7,014
Total .....	8,264	1,100	1,007	901	780	681	612	542	498	477	416	15,278

**Other Provisions**

The other provisions of the proposed regulations are not estimated to have a significant net budget impact. The changes to the SCRA servicing requirements so that lenders and loan servicers utilize the authoritative Department of Defense database to ensure the SCRA interest rate limit is applied appropriately and allowing for alternative evidence would make it easier for eligible borrowers to receive their SCRA benefit. However, it does not extend eligibility to a new set of

borrowers and the costs associated with eligible borrowers would be in the budget baseline for the President's FY 2016 budget. The treatment of lump-sum payments for borrowers who qualify for loan repayment under Department of Defense loan repayment programs may allow some additional borrowers to qualify for public service loan forgiveness. Less than one percent of borrowers are expected to be affected by this change, and the lump sum payment must equal the amount owed by the borrower for however many

months for which the borrower receives credit toward forgiveness, so the change in cash flows from those estimated to receive public service loan forgiveness for military careers is not expected to be significant. We believe it is appropriate to allow these borrowers to receive credit towards months of payments for public service loan forgiveness in this instance so active duty military members receive the forgiveness to which they are entitled and already estimated to receive. The PRI challenges and appeals will expand the number of

such actions the Department will be involved with and may result in some schools retaining their participation in title IV, HEA programs, but we do not expect this to affect program volumes and costs in a significant way. Finally, the requirement that guaranty agencies provide information to assist borrowers in transitioning from rehabilitation of defaulted loans to loan repayment should benefit borrowers and may result in improved payment behavior, but we do not expect this to materially affect the amount collected from borrowers.

*Assumptions, Limitations and Data Sources*

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education and Department of Treasury systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey and the 2004 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

**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 regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

**TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES**  
[In millions]

Category	Benefits	
	7%	3%
Extension of income-driven repayment plan with payment based on 10 percent of income and a 20/25-year repayment to all cohorts of borrowers .....	Not Quantified.	
Transition assistance for borrowers rehabilitating loans. Easier access for military borrowers to SCRA and public service loan forgiveness benefits.		
Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements .....	\$5.95	\$5.99
Category	Transfers	
	7%	3%
Reduced payments collected from some borrowers who choose the REPAYE plan .....	\$1,844	\$1,661

**Alternatives Considered**

In the interest of promoting good governance and ensuring that these proposed regulations produce the best possible outcome, the Department reviewed and considered various proposals from both internal sources as well as from non-Federal negotiators. We summarize below the major proposals that we considered but ultimately declined to implement in these proposed regulations.

The Department and the non-Federal negotiators exchanged proposals on the length of the repayment period for different types of borrowers. Initially, the Department proposed that borrowers with an outstanding loan balance of \$57,500 or more when they entered the REPAYE plan would be required to make 25 years of qualifying payments to qualify for loan forgiveness. Borrowers with an outstanding loan balance below \$57,500 would have to make 20 years of payments. The non-Federal negotiators offered several proposals regarding this tiered forgiveness provision, including

indexing the threshold to any increases in the maximum aggregate loan amounts, basing it on the principal amount borrowed as opposed to the outstanding balance, or eliminating it and having a 20-year repayment period for all borrowers. The Department was not willing to eliminate the 20- and 25-year distinction entirely for budget and policy reasons, but did consider options for the different categories. In order to facilitate consensus, the Department agreed to a 20-year period for borrowers whose loans were all for undergraduate education and a 25-year period for all loans made to borrowers who took out a loan for graduate education. The Department was willing to consider this approach because the \$57,500 amount was derived from the maximum loan amount for independent undergraduate borrowers. Compared to the original proposal with the \$57,500 limit, this proposal from the non-Federal negotiators would not have a “cliff effect,” whereby a borrower who had as little as \$1.00 in outstanding loan debt

over the specified amount would have to repay for an additional five years before qualifying for loan forgiveness. Undergraduate borrowers who take out the maximum loan amount would benefit from this change, while low-borrowing graduate students would have a longer time to forgiveness.

The Department also considered alternative approaches with respect to borrowers who do not provide the required annual documentation of their income. Under the PAYE repayment plan, such a borrower has ten days after the deadline to submit payment information and have a new payment amount calculated. If the borrower does not provide the income documentation within that time, the borrower will have a payment calculated based on the standard repayment plan with a 10-year repayment period based on the balance at the time the borrower entered the PAYE repayment plan. This standard repayment cap was not included in the REPAYE plan, and the treatment of borrowers who do not provide income

information was the subject of much discussion. In evaluating options for handling such borrowers, the Department sought to provide an incentive for timely submission of income documentation and to provide a disincentive to those who would withhold updated information reflecting a significant increase in income. Options considered included an extended grace period for the borrower to submit the documentation, placing borrowers who did not submit documentation and did not choose an alternative plan into standard repayment with amortization over the remainder of the borrower's 20- or 25-year REPAYE plan repayment term, or applying the standard repayment plan amount as a minimum payment. Because the Department considers the absence of a standard repayment cap to be important for targeting the benefits of the REPAYE plan to the neediest borrowers and for reducing costs of the plan so that it can be extended to all cohorts of borrowers, reinstating a cap based on the standard payment was not an option. After much discussion, both internally and with the non-Federal negotiators, the treatment of borrowers who do not document their income summarized in *Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income* was agreed upon at the third session of negotiations. The Department believes this approach allows those who do not provide the documentation because of confusion or difficulty in assembling the paperwork time to reenter the program and earn credit towards forgiveness for payments made under the alternative repayment plan, while those whose income increased in the time they did not provide the documentation would have to make up the difference by the end of the 20 or 25-year period.

#### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.16.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

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

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations concern the relationship between certain Federal student loan borrowers and the Federal Government, with some of the provisions modifying the servicing and collection activities of guaranty agencies and other parties. The Department believes that the entities affected by these proposed regulations do not fall within the definition of a small entity. Additionally, the changes to the PRI challenges and appeals process may affect a small number of institutions that would qualify as small entities and potentially allow some to continue participating in title IV programs, but we do not expect the effect to be economically significant for a substantial number of small entities. 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, and defines "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. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

#### Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent

burden, the Department provides 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.

Sections 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 685.208, and 682.209 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, 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.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

#### Discussion

##### Sections 668.16, 668.204, 668.208, and 668.214—Participation Rate Index Challenges and Appeals

*Requirements:* Timelines for submitting a challenge or appeal to the potential consequences of an institution's CDR on the basis of its PRI.

The proposed regulations would permit an institution to bring a timely PRI challenge or appeal in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal from that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. In addition, if the institution brought a successful PRI challenge with respect to a draft CDR that was less than

or equal to the corresponding official CDR, this would preclude provisional certification and loss of eligibility from being imposed based on the official CDR, without the institution needing to bring a PRI appeal in later years.

*Burden Calculation:* Because the proposed regulations would not fundamentally change an institution's basis for challenging or appealing its CDR, and would only alter the timeline in which an institution may submit its challenge or appeal, we do not believe that these regulations would significantly alter the burden on institutions. However, they would prevent a school from needing to appeal a final CDR on the basis of its PRI if the final CDR is less than or equal to the draft CDR on which a PRI challenge was successful.

We estimate that the change in the need to appeal a final CDR on the basis of PRI when a challenge to a comparable rate on the same basis was successful would prevent 50 appeals per year—15 from public institutions, 10 from not-for-profit institutions, and 25 from proprietary institutions. We have previously estimated that an appeal takes each institution 1.5 hours per response.

Under proposed §§ 668.16, 668.204, 668.208, and 668.214, therefore, for public institutions, we estimate burden would decrease by 23 hours per year (15 public institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For not-for-profit institutions, we estimate burden would decrease by 15 hours per year (10 not-for-profit institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For proprietary institutions, we estimate that burden would decrease by 37 hours per year (25 proprietary institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal).

Collectively, the total decrease in burden under §§ 668.16, 668.204, 668.208, and 668.214 would be 75 hours under OMB Control Number 1845-0022.

#### **Sections 682.202, 682.208, and 682.410—Servicemembers Civil Relief Act in the FFEL Program**

*Requirements:* Matching borrower identifiers in a loan holder's servicing system against the Department of Defense's DMDC database.

Under proposed § 682.208(j)(1), (6), and (7), a FFEL Program loan holder, including a guaranty agency, must match information in its servicing system, including the identifiers of borrowers, co-borrowers, and endorsers, against the Department of Defense's DMDC database to determine whether

borrowers are eligible to receive an interest rate reduction under the SCRA.

Under proposed § 682.208(j)(5), any FFEL Program loan holder, including a guaranty agency, must notify a borrower if an interest rate reduction under the SCRA is applied as a result of the loan holder having received evidence of the borrower's or endorser's qualifying status having begun within 30 days of the date that the loan holder applies the interest rate reduction.

Under proposed § 682.208(j)(8), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction to a loan that was in the process of being paid in full through loan consolidation at the time the interest rate reduction was applied by returning the overpayment to the holder of the consolidation loan.

Under proposed § 682.208(j)(9), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction by returning the overpayment to the borrower.

*Burden Calculation:* There are approximately 53 public loan holders that hold loans for approximately 557,341 borrowers, 151 not-for-profit loan holders that hold loans for approximately 2,738,171 borrowers, and 3,204 proprietary loan holders that hold loans for approximately 10,524,463 borrowers. We estimate that one percent of borrowers are actually eligible for the SCRA interest rate limit.

Proposed § 682.208(j) would result in a shift in burden from borrowers to loan holders. Under the current regulations, a borrower is required to submit a written request for his or her loan holder to apply the SCRA interest rate limit and a copy of his or her military orders to support the request. Because, under the proposed regulations, a borrower would no longer be required to submit a written request or a copy of his or her military orders, the burden on borrowers would be almost completely eliminated. While borrowers would still be able to submit other evidence that they qualify for the SCRA interest rate limit and loan holders would be required to evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database would give rise to the need for a borrower to submit alternative evidence of his or her military service. However, anecdotal accounts suggest that the error rate of the DMDC database is de minimus. Therefore, the proposed regulations would eliminate all but 20

hours of burden on borrowers associated with the current regulation.

However, because the Department plans to create a form for borrowers to use to certify their active duty service in cases in which the borrower believes that the information in the DMDC database is incorrect, we estimate that 59 FFEL Program borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form would increase burden by 20 hours (59 borrowers multiplied by 0.33 hours per response).

For proposed § 682.208(j)(1), (6), and (7), we estimate that it would take each loan holder approximately three hours per month to extract applicable data from their servicing systems, format it to conform to the DMDC database file layout, perform quality assurance, submit the file to the DMDC database, retrieve the result, import it back into their systems, perform quality assurance, and then, to the extent that the borrower or endorser is or was engaged in qualifying military service, apply, extend, or end the SCRA interest rate limitation.

Under proposed § 682.208(j)(1), (6), and (7), therefore, for public loan holders, we estimate that this regulation would increase burden by 1,908 hours per year (53 public loan holders multiplied by 3 hours per month multiplied by 12 months). For not-for-profit loan holders, we estimate that this regulation would increase burden by 5,436 hours per year (151 not-for-profit loan holders multiplied by 3 hours per month multiplied by 12 months). For proprietary loan holders, we estimate that this regulation would increase burden by 115,344 hours per year (3,204 proprietary loan holders multiplied by 3 hours per month multiplied by 12 months).

For proposed § 682.208(j)(8), we estimate that it would take each loan holder 1 hour per borrower to refund overpayments for borrowers who have consolidated their loans. We estimate that, over the past six months, 69 percent of the borrowers who consolidated loans with an interest rate in excess of 6 percent. We further estimate that 0.1 percent of those consolidation loans would create an overpayment that would require a loan holder to issue a refund to the holder of the consolidation loan.

Under proposed § 682.208(j)(8), therefore, for public loan holders, we estimate that this regulation would increase burden by 4 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for

the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For not-for-profit loan holders, we estimate that this regulation would increase burden by 19 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For proprietary loan holders, we estimate that this regulation would increase burden by 73 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent).

For proposed § 682.208(j)(9), we estimate that it would take each loan holder 1 hour per borrower to refund overpayments for borrowers for whom the application of the SCRA interest rate limit caused their loan to be overpaid. We estimate that an overpayment would result for 0.05 percent of borrowers who have the SCRA interest rate limit applied.

Under proposed § 682.208(j)(9), therefore, for public loan holders, we estimate that this regulation would increase burden by 3 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For not-for-profit loan holders, we estimate that this regulation would increase burden by 14 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For proprietary loan holders, we estimate that this regulation would increase burden by 53 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent).

Collectively, the total increase in burden under proposed § 682.405 would be 122,854 hours under OMB Control Number 1845–0093. The burden associated with the form (20 hours) would be associated with OMB Control Number 1845–NEW.

#### **Section 682.405—Loan Rehabilitation Agreement**

*Requirements:* Providing information to borrowers about repayment options.

Under proposed § 682.405(b)(1)(xi) and (c), guaranty agencies would be required to provide information to borrowers with whom they have entered into a rehabilitation agreement to inform them of the repayment options available to them upon successfully completing their loan rehabilitation.

*Burden Calculation:* There are approximately 2,611,504 borrowers of FFEL Program loans who are in default, of which 799,904 have loans held by public guaranty agencies and 1,811,600 have loans held by not-for-profit guaranty agencies. Approximately 4.79 percent of those borrowers have entered into a rehabilitation agreement with a guaranty agency to rehabilitate their defaulted FFEL Program loans. Therefore, public guaranty agencies administer rehabilitation agreements with approximately 38,315 borrowers and not-for-profit guaranty agencies administer rehabilitation agreements with approximately 86,776 borrowers.

We estimate that it would take a guaranty agency 10 minutes (0.17 hours) per borrower to send the required communication to a borrower and respond to borrower inquiries generated by the communication.

Under proposed § 682.405(c), therefore, for public guaranty agencies, we estimate that this regulation would increase burden by 6,514 hours per year (38,315 borrowers multiplied by 0.17 hours per borrower). For not-for-profit guaranty agencies, we estimate that this regulation would increase burden by 14,752 hours per year (86,776 borrowers multiplied by 0.17 hours per borrower).

Collectively, the total increase in burden under proposed § 682.405 would be 21,266 hours under OMB Control Number 1845–0020.

#### **Section 685.202—Servicemembers Civil Relief Act in the Direct Loan Program**

*Requirements:* Borrowers would no longer be required to submit a written request and a copy of their military orders to receive an interest rate reduction under the SCRA; instead, the Department would, as in the FFEL Program, query the DMDC database to determine whether a borrower is eligible.

Proposed § 685.202(a)(11) would shift the burden from borrowers to the Secretary. Under the current regulations, borrowers are required to submit a written request for the Secretary to apply the SCRA interest rate limit and a copy of their military orders to support the request. Because, under the proposed regulations, borrowers would no longer be required to submit a written request or a copy of their military orders, the burden on

borrowers would be eliminated. While borrowers would still be permitted to submit other evidence that they qualify for the SCRA interest rate limit, and the Secretary would evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database would give rise to a borrower needing to submit alternative evidence of his or her military service, but anecdotal accounts suggest that the error rate of the DMDC database is de minimis. Therefore, the proposed regulations would eliminate all but 5 hours of burden on borrowers that are associated with the current regulation.

However, because the Department plans to create a form for borrowers to provide a certification of the borrower's authorized official in cases where the borrower believes the DMDC database is inaccurate or incomplete, we estimate that 141 Direct Loan borrowers would submit such a form, and that it would take a borrower 20 minutes (0.33 hours) per response. We estimate that this form would increase burden by 47 hours (141 borrowers multiplied by 0.33 hours per response).

Collectively, the total decrease in burden for § 685.202 would be 681 hours under OMB Control Number 1845–0094. This would eliminate all but 47 hours of burden in OMB Control Number 1845–0094. The burden associated with the form (47 hours) would be associated with OMB Control Number 1845–NEW.

#### **Sections 685.208 and 685.209—Revised Pay As You Earn Repayment Plan**

*Requirements:* Application, recertification, documentation of income, and certification of family size.

Under proposed § 685.209(c)(4), a borrower selecting the REPAYE plan would apply for the plan, provide documentation of his or her income and, as applicable, his or her spouse's income, and provide a certification of family size. The borrower must provide this information annually. If a borrower who repays his or her Direct Loans under the REPAYE plan leaves the plan and subsequently wishes to return to the REPAYE plan, the borrower must provide income documentation and family size certifications for each year in which the borrower was not repaying his or her loans under the REPAYE plan after having left the plan before being allowed to re-enter the REPAYE plan.

*Burden Calculation:* These information collection requirements are calculated as part of the Income-Driven Repayment Plan Request, under OMB Control Number 1845–0102. This collection is associated with this

rulemaking because the proposed regulations require that the collection be modified to encompass the REPAYE plan. Currently, we estimate that it takes 20 minutes (0.33 hours) to complete the Income-Driven Repayment Plan Request and that 3,159,132 Direct Loan and FFEL Program borrowers complete the form. Even though this form will be revised to include the REPAYE plan, we do not believe that it will take any additional time for a borrower to complete the form. Therefore, we expect the burden hours per response to remain 20 minutes (0.33 hours). However, we are making an adjustment to the number of borrowers who complete the form based on new data and an overall increase in the borrower population. The adjustment to the number of borrowers who complete the form would increase that number from 3,159,132 borrowers to 4,840,000

borrowers. However, because the REPAYE plan would be available to all Direct Loan borrowers, regardless of when the borrower took out their loans, and because there would be no requirement for the borrower to demonstrate PFH to enroll in the REPAYE plan, we estimate that the number of respondents would increase by 1,250,000 borrowers. This would bring the total number of respondents to 6,090,000 borrowers, of which only 1,250,000 of the increase would be attributable to the REPAYE plan.

Collectively, the total increase in burden for §§ 685.208 and 685.209 would be 967,186 hours (2,930,868 additional borrowers multiplied by 0.33 hours per response), of which 412,500 hours (1,250,000 additional borrowers multiplied by 0.33 hours per response) would be attributable to the REPAYE plan under OMB Control Number 1845-0102. Collectively, the total increase in

burden under §§ 685.208 and 685.209 under OMB Control Number 1845-0021 would be 0 hours.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using wage data developed using U.S. Bureau of Labor Statistics data, available at [www.bls.gov/ncs/ect/sp/ecsuphst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf), is \$11,969,686 as shown in the chart below. This cost was based on an hourly rate of \$36.55 for institutions, lenders, and guaranty agencies and \$16.30 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
668.16, 668.204, 668.208, 668.214—PRI challenge and appeal.	This regulation would permit an institution to bring a timely PRI challenge in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.	OMB 1845-0022—This would be a revised collection. We estimate that burden on institutions would decrease by 75 hours.	-\$2,741
682.202 and 682.208—SCRA in the FFEL Program.	Would expand current regulations to require loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the Department of Defense.	OMB 1845-0093—This would be a revised collection. We estimate that burden on loan holders would increase by 122,854 hours and that all except 20 hours of burden on borrowers would be eliminated. OMB 1845-NEW—This would be a new collection. We estimate that burden on borrowers would increase by 20 hours.	\$4,480,876

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
682.405—Loan rehabilitation.	This change would require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into an agreement to rehabilitate a defaulted FFEL Program loan.	OMB 1845-0020—This would be a revised collection. We estimate that burden on loan holders would increase by 21,266 hours.	\$777,272
685.202 .....	Would modify current regulations to require loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the Department of Defense..	OMB 1845-0094—This collection would be revised. We estimate that all but 47 hours of burden on borrowers would be eliminated. OMB 1845-NEW This would be a new collection. We estimate that burden on borrowers would increase by 47 hours.	-\$9,471
685.208 and 285.209—REPAYE plan.	Would add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209 of the Direct Loan Regulations. The REPAYE plan is modeled on the Pay as You Earn (PAYE) repayment plan, and would be available to all Direct Loan student borrowers regardless of when the student borrowers received their Direct Loans.	OMB 1845-0021—This collection would not change because all burden associated with the collection requirements is contained in 1845-0102. OMB 1845-0102—This would be a revised collection. We estimate that burden would increase on borrowers by 967,186 hours, of which 412,500 hours would be attributable to the proposed regulation.	\$15,764,838, of which \$6,723,750 would be attributable to the proposed regulation.
685.219—Public Service Loan Forgiveness.	Would permit lump sum payments made on a borrower's behalf by the Department of Defense to be treated like certain other payments made on behalf of borrowers who have served in AmeriCorps or the Peace Corps.	OMB 1845-0021—This provision contains no collection requirements.	\$0

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845-0020 ....	8,241,898	+ 21,266
1845-0022 ....	2,216,045	- 75
1845-0093 ....	122,874	+ 122,275
1845-0094 ....	47	- 634
1845-0102 ....	2,009,700	+ 967,186
1845-NEW ..	67	+ 67

Control No.	Total proposed burden hours	Proposed change in burden hours
Total .....	12,590,631	= 1,110,085

We have prepared Information Collection Requests for these information collection requirements. If you want to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notice.

**Note:** The Office of Information and Regulatory Affairs in OMB and the

Department review all comments posted at [www.regulations.gov](http://www.regulations.gov).

In preparing your comments, you may want to review the Information Collection Requests, including the supporting materials, in [www.regulations.gov](http://www.regulations.gov) by using the Docket ID number specified in this notice. These proposed collections are identified as proposed collections 1845-0020, 1845-0022, 1845-0093, 1845-0094, 1845-0102, and 1845-NEW.

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

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by August 10, 2015. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments.

**Intergovernmental Review**

These programs are 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 proposed regulations would 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 one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

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**List of Subjects**

*34 CFR Part 668*

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

*34 CFR Part 682*

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

*34 CFR Part 685*

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

Dated: July 1, 2015.

**Arne Duncan**,  
*Secretary of Education.*

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

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

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

**Authority:** 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

- 2. Section 668.16 is amended by:
- A. Revising paragraph (m)(2)(ii)(B).
- B. Adding paragraph (m)(2)(ii)(C).
- C. Revising paragraphs (m)(2)(iv) and (v).

The revisions and addition read as follows:

**§ 668.16 Standards of administrative capability.**

- \* \* \* \* \*
- (m) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(i) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(2) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

\* \* \* \* \*

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraph (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

\* \* \* \* \*

■ 3. Section 668.204 is amended by revising paragraphs (c)(1)(ii) and (iii) and (c)(5) to read as follows:

**§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.**

\* \* \* \* \*

- (c) \* \* \*
- (1)(i) \* \* \*

(ii) Subject to § 668.208(b), you may challenge a potential loss of eligibility under § 668.206(a)(2), based on any cohort default rate that is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years, if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on any cohort default rate that fails to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

\* \* \* \* \*

(5) If we determine that you qualify for continued eligibility or full

certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. Unless that next official cohort default rate is less than or equal to your draft cohort default rate, a successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, or if the next official cohort default rate published is less than or equal to the draft rate you successfully challenged, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2), or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

\* \* \* \* \*

■ 4. Section 668.208 is amended by revising paragraphs (a)(2)(ii) and (b)(2) and (3) to read as follows:

**§ 668.208 General requirements for adjusting official cohort default rates and for challenging or appealing their consequences.**

(a) \* \* \*  
 (2) \* \* \*  
 (ii) A participation rate index challenge or appeal submitted under this section and § 668.204 or § 668.214;

\* \* \* \* \*

(b) \* \* \*  
 (2) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, more than once on that cohort default rate.

(3) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

\* \* \* \* \*

■ 5. Section 668.214 is amended by revising paragraphs (a)(1) through (3) and (c)(2) to read as follows:

**§ 668.214 Participation rate index appeals.**

(a) *Eligibility.* (1) You do not lose eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if you bring an appeal in

accordance with this section that demonstrates that your participation rate index for that cohort's fiscal year is equal to or less than 0.0832.

(2) Subject to § 668.208(b), you do not lose eligibility under § 668.206(a)(2) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for any of the three most recent cohorts' fiscal years is equal to or less than 0.0625.

(3) Subject to § 668.208(b), you are not placed on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for either of those two cohorts' fiscal years is equal to or less than 0.0625.

\* \* \* \* \*

(c) \* \* \*

(2) Notice under § 668.205 of a cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent.

\* \* \* \* \*

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

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

**Authority:** 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 7. Section 682.202 is amended by revising paragraph (a)(8) to read as follows:

**§ 682.202 Permissible charges by lenders to borrowers.**

\* \* \* \* \*

(a) \* \* \*

(8) *Applicability of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 527, App. sec. 207).*

Notwithstanding paragraphs (a)(1) through (4) of this section, a loan holder must use the official electronic database maintained by the Department of Defense to identify all borrowers with an outstanding loan who are active duty servicemembers, as defined in 10 U.S.C. 101(d)(1) and (5), and ensure the interest rate on a borrower's qualified loans with an outstanding balance does not exceed the six percent maximum interest rate under 50 U.S.C. 527, App. section 207(a) on FFEL Program loans made prior to the borrower entering active duty status. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan.

\* \* \* \* \*

■ 8. Section 682.208 is amended by adding paragraph (j) to read as follows:

**§ 682.208 Due diligence in servicing a loan.**

\* \* \* \* \*

(j)(1) Effective July 1, 2016, a loan holder is required to use the official electronic database maintained by the Department of Defense, to—

(i) Identify all borrowers who are active duty servicemembers and who are eligible under § 682.202(a)(8); and  
 (ii) Confirm the dates of the borrower's active duty status and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent.

(2) The loan holder must compare its list of borrowers against the database maintained by the Department of Defense at least monthly to identify servicemembers who are in active duty status for the purpose of determining eligibility under § 682.202(a)(8).

(3) A borrower may provide the loan holder with alternative evidence of active duty status to demonstrate eligibility if the borrower believes that the information contained in the Department of Defense database is inaccurate or incomplete. Acceptable alternative evidence includes—

(i) A copy of the borrower's military orders; or  
 (ii) The certification of the borrower's military service from an authorized official using a form approved by the Secretary.

(4)(i) When the loan holder determines that the borrower is eligible under § 682.202(a)(8), the loan holder must ensure the interest rate on the borrower's loan does not exceed the SCRA interest rate limit of six percent.

(ii) The loan holder must apply the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database, or alternative evidence of active duty status received under paragraph (j)(3) of this section, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date.

(iii) In the case of a reservist, the loan holder must use the reservist's notification date as the start date of the military service period.

(5) When the loan holder applies the SCRA interest rate limit of six percent to a borrower's loan, it must notify the borrower in writing within 30 days that the interest rate on the loan has been reduced to six percent during the borrower's period of active duty service.

(6)(i) For PLUS loans with an endorser, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan based on the borrower's or

endorser's active duty status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan.

(ii) If both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(7)(i) For joint consolidation loans, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan if either of the borrowers is eligible for the SCRA interest rate limit under § 682.202(a)(8).

(ii) If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(8) If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan.

(9) For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan, the loan holder must refund the amount of that overpayment to the borrower.

\* \* \* \* \*

- 9. Section 682.405 is amended:
- A. In paragraph (a)(2)(ii), by adding the words "or assigned to the Secretary" after the word "lender".
- B. In paragraph (b)(1)(vi), by adding the words "or assignment to the Secretary" after the words "repurchase by an eligible lender" and removing the word "other" after the words "The agency may not impose any".
- C. By revising paragraph (b)(1)(vi)(B).
- D. In paragraph (b)(1)(xi), by removing the word "During", and adding, in its place, the words "Except as provided in paragraph (c) of this section, during".
- E. By redesignating paragraph (b)(2) as paragraph (b)(2)(i).
- F. By adding paragraph (b)(2)(ii).
- G. In paragraph (b)(3), by adding the words "or assignment to the Secretary" after the words "to an eligible lender".
- H. In paragraph (b)(3)(i), by adding the words "or assignment" after the words "of the sale".

■ I. In paragraph (b)(3)(i)(A), by adding the words "or assignment" after the words "such sale".

■ J. In paragraph (b)(4), by removing the citation "§ 682.209(a) or (h)", and adding, in its place, the citation "§ 682.209(a) or (e)".

■ K. By revising paragraph (c).  
The addition and revisions reads as follows:

**§ 682.405 Loan rehabilitation agreement.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*
- (vi) \* \* \*

(B) Of the amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and

\* \* \* \* \*

- (2) \* \* \*

(ii) If the guaranty agency has been unable to sell the loan, the guaranty agency must assign the loan to the Secretary.

\* \* \* \* \*

(c) A guaranty agency must make available to the borrower—

(1) During the rehabilitation period, information about repayment plans, including the income-based repayment plan, that may be available to the borrower upon rehabilitating the defaulted loan and how the borrower can select a repayment plan after the loan is purchased by an eligible lender or assigned to the Secretary; and

(2) After the successful completion of the rehabilitation period, financial and economic education materials, including debt management information.

\* \* \* \* \*

■ 10. Section 682.410 is amended by revising paragraph (b)(3) to read as follows:

**§ 682.410 Fiscal, administrative, and enforcement requirements.**

\* \* \* \* \*

- (b) \* \* \*

(3) *Interest charged by guaranty agencies.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(A) The rate established by the terms of the borrower's original promissory note; or

(B) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(ii) If the guaranty agency determines that the borrower is eligible for the interest rate limit of six percent under § 682.202(a)(8), the interest rate described in paragraph (b)(3)(i) shall not exceed six percent.

\* \* \* \* \*

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

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

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

■ 12. Section 685.202 is amended by revising paragraph (a)(11) to read as follows:

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

(a) \* \* \*

(11) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (10) of this section, upon the Secretary's receipt of evidence of the borrower's active duty military service, the maximum interest rate under 50 U.S.C. 527, App. section 207(a), on Direct Loan Program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty military service. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan.

\* \* \* \* \*

■ 13. Section 685.208 is amended:

■ A. By revising paragraph (a)(1)(i)(D).

■ B. In paragraph (a)(4)(i), by removing the word "the" before the words "income-contingent" and adding, in its place, the word "an".

■ C. In paragraph (a)(5), by removing the word "or" after the words "income-contingent" and adding, in its place, the words "repayment plans and the".

■ D. By redesignating paragraphs (k)(3) and (4) as paragraphs (k)(4) and (5), respectively.

■ E. By adding a new paragraph (k)(3).

The revision and addition read as follows:

**§ 685.208 Repayment Plans.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(D) The income-contingent repayment plans in accordance with paragraph (k)(2) or (3) of this section; or

\* \* \* \* \*

- (k) \* \* \*

(3) Under the income-contingent repayment plan described in

§ 685.209(c), a borrower's required monthly payment is limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with § 685.209(c)(4)(vii)(E).

\* \* \* \* \*

■ 14. Section 685.209 is amended:

■ A. By revising the introductory text of paragraph (a)(1).

■ B. In the second sentence of paragraph (a)(2)(iii), by adding the words "or the Revised Pay As You Earn repayment plan" immediately after the words, "the income-based repayment plan".

■ C. In paragraph (a)(6)(i)(E), by adding the punctuation and words "the Revised Pay As You Earn repayment plan described in paragraph (c) of this section," immediately after the words "this section".

■ D. By redesignating paragraph (a)(6)(i)(F) as paragraph (a)(6)(i)(G).

■ E. By adding a new paragraph (a)(6)(i)(F).

■ F. In paragraph (a)(6)(iii)(A), by adding the punctuation and words "the Revised Pay As You Earn repayment plan described in paragraph (c) of this section," immediately after the words "this section".

■ G. In paragraph (a)(6)(iii)(B), by adding the punctuation and words "the Revised Pay As You Earn repayment plan described in paragraph (c) of this section," immediately after the words "this section".

■ H. In paragraph (b)(3)(iii)(B)(3), by adding the words "or the Revised Pay As You Earn repayment plan" after the words "repayment plan".

■ I. By adding paragraph (b)(3)(iii)(B)(4).

■ J. By adding paragraph (c).

The revision and additions read as follows:

**§ 685.209 Income-contingent repayment plans.**

(a) \* \* \*

(1) *Definitions.* As used in this section, other than as expressly provided for in paragraph (c)—

\* \* \* \* \*

(6) \* \* \*

(i) \* \* \*

(F) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(4) Periods in which the borrower made monthly payments under the

alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

\* \* \* \* \*

(c) *Revised Pay As You Earn repayment plan.* The Revised Pay As You Earn repayment plan (REPAYE plan) is an income-contingent repayment plan under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) *Definitions.* As used in this paragraph (c)—

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is—

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.

(ii) *Eligible loan* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. Family size does not include the borrower's spouse for a borrower filing separately if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs;

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

(A) For an unmarried borrower, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

(v) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with paragraph (c)(4)(vii)(E) of this section.

(ii) The Secretary adjusts the calculated monthly payment if—

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower's eligible loans are not solely Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

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

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(1) of this section; and

(3) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (c)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(C) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(D) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with § 685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section—

(1) Does not include any period during which the borrower receives an economic hardship deferment;

(2) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(3) For a Direct Consolidation Loan, includes any period in which the

underlying loans were repaid under the income-based repayment plan or the Pay As You Earn repayment plan.

(iv)(A) Except as provided in paragraph (c)(2)(iii) of this section, accrued interest is capitalized—

(1) When the Secretary determines that a borrower does not have a partial financial hardship; or

(2) At the time a borrower leaves the REPAYE plan.

(B)(1) The amount of accrued interest capitalized under paragraph (c)(2)(iv)(A)(1) of this section is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the REPAYE plan.

(2) After the amount of accrued interest reaches the limit described in paragraph (c)(2)(iv)(B)(1) of this section, interest continues to accrue, but is not capitalized, while the borrower remains on the REPAYE plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the REPAYE plan or the Secretary determines the borrower does not have a partial financial hardship.

(vi) A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with § 685.210(b).

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the REPAYE plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(3)(i) of this section.

(4) *Eligibility documentation, verification, and notifications.* (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower's monthly payment amount for that year. For each subsequent year that the borrower

remains on the plan, the Secretary also determines whether the borrower has a partial financial hardship. To make these determinations, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) Unless otherwise directed by the Secretary, the borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making the determinations described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (c)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (c)(4)(i)(C) and (c)(4)(vi) and (vii) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (c)(4)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraphs (c)(4)(vi) and (vii) of this section.

(iv) Each time the Secretary makes a determination that a borrower does not have a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that unpaid interest will be capitalized in accordance with paragraph (c)(2)(iv) of this section.

(v) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraph (c)(4)(i)(A) or (B) of this section, the borrower remains on his or her current repayment plan.

(vi) Except as provided in paragraph (c)(4)(viii) of this section, if a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) Ten years from the date the borrower begins repayment under the alternative repayment plan; or

(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (ii) of this section.

(vii) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(vi) of this section, the Secretary sends the borrower a written notification informing the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(vi) of this section;

(C) The borrower may change to another repayment plan in accordance with § 685.210(b);

(D) A borrower who has been removed from the REPAYE plan in accordance with paragraph (c)(4)(vi) of this section or changes to another repayment plan in accordance with paragraphs (c)(2)(vi) or (c)(4)(vi)(C) of this section may return to the REPAYE plan if he or she provides the documentation, as described in paragraphs (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower's current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;

(E) If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count toward forgiveness under the REPAYE plan or the other repayment plans under § 685.209(a), § 685.209(b), or § 685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(vi) of this section will not count toward public service loan forgiveness under § 685.219.

(viii) The Secretary does not take the action described in paragraph (c)(4)(vi) of this section if the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section more than 10 days after the specified annual deadline, but is able to

determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(ix) If the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(1) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.209(c)(3)(i).

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(3) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(5) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(5)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(5)(ii) of this section.

(ii)(A) A borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an

undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(5)(v) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(5)(v) of this section.

(iv) For the purpose of paragraph (c)(5)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of \$0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based-repayment plan described in § 685.221, including a monthly payment amount of \$0.00;

(C) A monthly payment made under—

(1) The Direct Loan standard repayment plan described in § 685.208(b);

(2) The alternative repayment plan described in paragraphs (c)(4)(vi) and (vii) of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;

(3) Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b); or

(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferral on his or her eligible Direct Loans.

(v) For a borrower who qualifies for the REPAYE plan, the beginning date for the 20-year or 25-year repayment period is—

(A) If the borrower made payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph

(b) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans; or

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221—

(1) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower qualified for the REPAYE plan;

(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower qualified for the REPAYE plan;

(3) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(B)(1) or (2) of this section, the date the borrower made a payment on the loan under the REPAYE plan;

(4) If the borrower consolidates his or her eligible loans, the date the borrower made a qualifying monthly payment on the Direct Consolidation Loan; or

(5) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(A) or (B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

(vi) Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year or 25-year forgiveness period.

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(5) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the

borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (c)(5) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the borrower with the information described in paragraph (c)(5)(vii)(A)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

\* \* \* \* \*

■ 15. Section 685.219 is amended:

■ A. In paragraph (c)(1)(iii), by adding the words and punctuation “or who qualifies for partial repayment of his or her loans under the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,” after “Peace Corps position”.

■ B. In paragraph (c)(1)(iv)(D), by removing the word “Any” and adding, in its place, the words “Except for the alternative repayment plan, any” and removing the word “paid” immediately after the words “monthly payment amount”.

■ C. In paragraph (c)(2), by adding the words and punctuation “or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,” after the words “leaving the Peace Corps”.

■ D. By adding a new paragraph (c)(3).

The addition reads as follows:

**§ 685.219 Public Service Loan Forgiveness Program.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(3) The Secretary considers lump sum payments made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense, to be qualifying payments in accordance with paragraph (c)(2) of this section for each year that a lump sum payment is made.

\* \* \* \* \*

■ 16. Section 685.221 is amended:

■ A. In the second sentence of paragraph (b)(3), by adding the words

“or the Revised Pay As You Earn repayment plan” immediately after the words “the Pay As You Earn repayment plan”.

■ B. By redesignating paragraph (f)(1)(vi) as paragraph (f)(1)(vii).

■ C. By adding a new paragraph (f)(1)(vi).

■ D. In paragraph (f)(3)(i), by adding the punctuation and words “, the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment

plan,” immediately after the words “repayment plan”.

■ E. In paragraph (f)(3)(ii), by removing the words “the income-contingent repayment plan” and adding, in their place, the words “one of the repayment plans described in paragraph (f)(3)(i) of this section”.

The addition reads as follows:

**§ 685.221 Income-based repayment plan.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

\* \* \* \* \*

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