subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, 22 CFR part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 2. Section 126.1 is amended by revising the table in paragraph (d)(2), and adding paragraph (w), and by removing the Note to 126.1.

The revision and addition read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(d) * * *

(2) * * *

Country	Country specific paragraph location
Afghanistan	See also paragraph (g) of this section.
Central African Republic	See also paragraph (u) of this section.
Cyprus	See also paragraph (r) of this section.
Democratic Republic of Congo	See also paragraph (i) of this section.
Eritrea	See also paragraph (h) of this section.
Haiti	See also paragraph (j) of this section.
Iraq	See also paragraph (f) of this section.
Lebanon	See also paragraph (t) of this section.
Libya	See also paragraph (k) of this section.
Somalia	See also paragraph (m) of this section.
South Sudan	See also paragraph (w) of this section.
Sudan	See also paragraph (v) of this section.
Zimbabwe	See also paragraph (s) of this section.

* * * * *

(w) *South Sudan.* It is the policy of the United States to deny licenses or other approvals for exports of defense articles and defense services destined for South Sudan, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for monitoring, verification, or peacekeeping support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Defense articles and defense services intended solely for the support of, or use by, African Union Regional Task Force (AU–RTF) or United Nations entities operating in South Sudan, including but not limited to the United Nations Mission in the Republic of South Sudan (UNMISS), the United Nations Mine Action Service (UNMAS), the United Nations Police (UNPOL), or the United Nations Interim Security Force for Abyei (UNISFA);

(3) Defense articles and defense services intended solely for the support of or use by non-governmental organizations in furtherance of conventional weapons destruction or humanitarian demining activities;

(4) Non-lethal defense articles intended solely for humanitarian or protective use and related technical training and assistance;

(5) Personal protective equipment including flak jackets and helmets, temporarily exported to South Sudan by United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; or

(6) Any defense articles and defense services provided in support of implementation of the Comprehensive Peace Agreement, the Agreement on the Resolution of the Conflict in the Republic of South Sudan, or any successor agreement.

Michael Miller,

Office Director, Office of Regional Security and Arms Transfers, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2018–02995 Filed 2–13–18; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

Correction

In rule document 2018–02554 appearing on pages 5536–5537 in the issue of February 8, 2018, make the following correction:

§ 706 .2 [Corrected]

■ On page 5537, in Table Four, in the second column, ''DDG 115'' should read ''DDG 116''.

[FR Doc. C1–2018–02554 Filed 2–13–18; 8:45 am]

BILLING CODE 1301–00–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

[Docket ID ED–2017–OPE–0112]

RIN 1840–AD28

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary delays, until July 1, 2019, the effective date of selected provisions of the final regulations entitled Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program (the 2016 final regulations), published in the **Federal**

Register on November 1, 2016. The Secretary is delaying the 2016 final regulations to ensure that there is adequate time to conduct negotiated rulemaking and develop revised regulations. The provisions for which the effective date is being delayed are listed in the **SUPPLEMENTARY INFORMATION** section of this document. The original effective date of the 2016 final regulations, published November 1, 2016, was July 1, 2017. The effective date was delayed by a document issued under section 705 of the Administrative Procedure Act (the 705 Document). The Department announced in an interim final rule (IFR) issued on October 24, 2017, that, under the Department's interpretation of the Higher Education Act, the effective date could be no earlier than July 1, 2018.

DATES: As of February 14, 2018, the effective date for the amendments to or additions of: §§ 668.14(b)(30), (31), and (32); 668.41(h) and (i); 668.71(c); 668.90(a)(3); 668.93(h), (i), (j); 668.171; 668.175 (c) and (d) and (f) and (h); Appendix C to Subpart L of Part 668; 674.33(g)(3) and (g)(8); 682.202(b)(1); 682.211(i)(7); 682.402(d)(3), (d)(6)(ii)(B)(*1*) and (*2*), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(*5*), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii); 682.405(b)(4); 682.410(b)(4) and (b)(6)(viii); 685.200(f)(3)(v) and (f)(4)(iii); 685.205(b)(6); 685.206(c); 685.212(k); 685.214(c)(2), (f)(4) through (7); 685.215(a)(1), (c)(1) through (c)(8), and (d); 685.222; Appendix A to Subpart B of Part 685; and 685.308(a), published November 1, 2016, at 81 FR 75926, and delayed on June 16, 2017 (82 FR 27621) and October 24, 2017 (82 FR 49114), is further delayed until July 1, 2019.

FOR FURTHER INFORMATION CONTACT: George Alan Smith, U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 294–34, Washington, DC 20202. Telephone: (202) 453–7757 or by email at: *George.Alan.Smith@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: On October 24, 2017 (82 FR 49114), the Department of Education (Department) published an IFR giving notice that under its interpretation of section 482 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089), also known as the ''master calendar requirement,'' selected provisions of the 2016 final regulations would have an effective date of July 1, 2018. (82 FR 49114) The original effective date of the 2016 final regulations (November 1, 2016 at 81 FR 75926) was July 1, 2017. On June 16, 2017, a 705 Document (82 FR 27621) delayed the effective date of certain provisions of the 2016 final regulations until a legal challenge by the California Association of Private Postsecondary Schools (CAPPS) is resolved. *See* Complaint and Prayer for Declaratory and Injunctive Relief, *California Association of Private Postsecondary Schools* v. *DeVos,* Civil Action No. 1:17–cv–00999 (D.D.C. May 24, 2017). As explained in the IFR, because the 2016 final regulations have been postponed by the 705 Document beyond July 1, 2017, they cannot become effective earlier than July 1, 2018, to comply with the master calendar requirement. (82 FR 49115–49116).

Also on June 16, 2017, the Department announced its intent to convene a committee to develop proposed regulations to revise the existing regulations on borrower defense to repayment of Federal student loans and other matters (82 FR 27640), the same topics addressed in the 2016 final regulations. Under the master calendar requirement, a regulatory change that has been published in final form on or before November 1 of the year prior to the start of an award year—which begins on July 1 of any given year—may take effect only at the beginning of the next award year, or in other words, on July 1 of the next year. In light of this requirement, the regulations resulting from negotiated rulemaking could not be effective before, at the earliest, July 1, 2019.

Accordingly, the Department published a notice of proposed rulemaking (NPRM) proposing to delay the effective date of the 2016 final regulations until July 1, 2019 (October 24, 2017 at 82 FR 49155). This notice adopts that proposal, delaying the effective date of the 2016 final regulations, to continue to preserve the regulatory status quo, until July 1, 2019. The Department will continue to process borrower defense claims under the existing regulations that will remain in effect during the delay so that borrowers may continue to apply for the discharge of all or a part of their loans.

Based on the above considerations, the Department delays until July 1, 2019, the effective date of the following provisions of the final regulations in title 34 of the Code of Federal Regulations (CFR):

§ 668.14(b)(30), (31), and (32) Program participation agreement.

§ 668.41(h) and (i) Reporting and disclosure of information.

§ 668.71(c) Scope and special definitions.

§ 668.90(a)(3) Initial and final decisions.

§ 668.93(h), (i), and (j) Limitation.

§ 668.171 General.

§ 668.175(c), (d), (f), and (h) Alternative standards and requirements.

Part 668 subpart L, Appendix C.

§ 674.33(g)(3) and (g)(8) Repayment.

§ 682.202(b)(1) Permissible charges by lenders to borrowers.

§ 682.211(i)(7) Forbearance.

§ 682.402(d)(3), (d)(6)(ii)(B)(*1*) and (*2*), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(*5*), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii) Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

§ 682.405(b)(4)(ii) Loan rehabilitation agreement.

§ 682.410(b)(4) and (b)(6)(viii) Fiscal, administrative, and enforcement requirements.

§ 685.200(f)(3)(v) and (f)(4)(iii) Borrower eligibility.

§ 685.205(b)(6) Forbearance.

§ 685.206(c) Borrower responsibilities and defenses.

§ 685.212(k) Discharge of a loan obligation.

§ 685.214(c)(2) and (f)(4) through (7) Closed school discharge.

§ 685.215(a)(1), (c)(1) through (c)(8), and (d) Discharge for false certification of student eligibility or unauthorized payment.

§ 685.222 Borrower defenses.

Part 685 subpart B, Appendix A Examples of borrower relief.

§ 685.300(b)(11), (b)(12), and (d) through (i) Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

§ 685.308(a) Remedial actions.

Note: Section 668.90 has been redesignated as § 668.91 and § 668.93 has been redesignated as § 668.94 pursuant to the borrower defense procedural rule, published January 19, 2017 at 82 FR 6253 (the borrower defense procedural rule).

As noted in the IFR, the Department interprets all references to ''July 1, 2017'' in the text of the above-referenced regulations to mean the effective date of those regulations. The regulatory text included references to the specific July 1, 2017, date in part to provide clarity to readers in the future as to when the regulations had taken effect. Because the regulations did not take effect on July 1, 2017, we would, in connection with this delay of the effective date, read those regulations as referring to the new effective date established by this rule, *i.e.,* July 1, 2019.

This delay of the effective date of the 2016 final regulations does not delay the effective dates of the regulatory provisions published in 81 FR 75926 which: (1) Expand the types of documentation that may be used for the granting of a discharge based on the death of the borrower; (2) amend the regulations governing the consolidation of Nursing Student Loans and Nurse Faculty Loans so that they align with the statutory requirements of section 428C(a)(4)(E) of the HEA; (3) amend the regulations governing Direct Consolidation Loans to allow a borrower to obtain a Direct Consolidation Loan regardless of whether the borrower is also seeking to consolidate a Direct Loan Program or FFEL Program loan, if the borrower has a loan type identified in 34 CFR 685.220(b); (4) address severability; and (5) make technical corrections. In the 2016 final regulations, 34 CFR 682.211(i)(7) and 682.410(b)(6)(viii) were designated for early implementation, at the discretion of each lender or guaranty agency. That designation remains effective.

Public Comment: In response to our invitation in the NPRM, 14 parties submitted comments on the delay of the effective date. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change.

Analysis of Comments and Changes

An analysis of the comments and of any changes to this regulatory action since publication of the NPRM follows.

A number of commenters opposed the proposed rule to delay the effective date of selected provisions of the 2016 final regulations until July 1, 2019, stating that such delay (1) would harm student loan borrowers and, in some cases, taxpayers; (2) is unnecessary and unaligned with the mission of the Department of Education; (3) is not justifiable on the grounds that there is pending litigation as referenced in the NPRM; and (4) would not be compliant with the Administrative Procedure Act (APA). However, several commenters supported the delay because they believed, collectively, that a further delay would (1) relieve the regulatory burden on institutions; (2) mitigate uncertainty about the potential impact of the current regulations; and (3) prevent unnecessary harm and disruption to postsecondary educational institutions. We discuss and respond to these comments in greater detail below.

Comments: Several commenters stated that a further delay of the 2016 final regulations would harm borrowers because they would continue to be subject to the predatory practices of certain institutions without those institutions being held accountable through the financial responsibility standards and disclosures and student warnings contained in the 2016 final regulations. The commenters argued that the Secretary should protect and provide relief to borrowers who attended institutions of higher education that misrepresented their program offerings, or that employed deceptive marketing or recruiting tactics, instead of delaying the 2016 final regulations. The commenters claimed that a further delay would ensure that borrowers who apply or have applied for a loan discharge based on a borrower defense would be required to wait for new rules to go into effect before receiving consideration of their claims under the process established by the 2016 final regulations while interest, collection costs and financial distress continued to mount. The commenters also stated that a further delay of the pre-dispute arbitration and class action waiver provisions of the 2016 final regulations would leave students without access to the courts, while statutes of limitation run. Several commenters also argued that a further delay of the rule would harm student loan borrowers because borrowers would be denied access to the many provisions in the 2016 final regulations that are beneficial to borrowers, including provisions that provide:

—Automatic closed school discharges for borrowers who were enrolled in schools that closed on or after November 13, 2013, and who did not enroll in another school within three years of their school's closure;
—A second level of Departmental review for closed school discharge claims that were denied by a guaranty agency;
—An expansion of the conditions under which a FFEL or Direct Loan borrower may qualify for a false certification discharge;
—A clear process, based on new Federal standards, that establishes a borrower's procedural rights and describes how the Department will consider individual and group borrower defense discharge claims and pending requests for forbearance or suspension of collection on loans that are subject to borrower defense claims;
—Prohibitions on schools' ability to enforce pre-dispute arbitration agreements and class action waivers as to borrower defense-related claims for students receiving Direct Loans;
—Institutional financial responsibility triggers to protect the Federal government from losses that may arise from borrower defense claims and sudden school closures; and,
—Institutional financial protection disclosures for prospective and enrolled students to assist students in making informed choices about where to matriculate.

One commenter asserted that further delaying the 2016 final regulations would perpetuate existing harms experienced by borrowers, such as poor credit ratings resulting from debt that borrowers accumulated that the borrower may be able to discharge based on a borrower defense.

One commenter argued that further delay in the effective date harms borrowers because the delay creates uncertainty in how the Department will treat future borrower defense claims. The commenter asserted that while borrowers can wait for the outcome of the new rulemaking effort for clarity on the process, waiting has risks for borrowers as well, including the application of statutes of limitations which may limit the loan amount that may be discharged. The same commenter noted that Direct Loan borrowers with loans issued during the delay cannot avail themselves of the Federal standard in the 2016 final regulations; these borrowers will be limited to the State law standard. Finally, this commenter stated that although the Department claimed that borrowers would not be harmed by the further delay of the effective date of the 2016 final regulations because borrower defense claims would continue to be processed under existing regulations, the Department's own impact analysis estimates a reduction in student loan discharges of nearly two billion as a result of the further delay. Citing a July 2017 letter from the Department's Acting Under Secretary to Senator Richard Durbin, the commenter stated that the Department had not approved borrower defense applications since January 20, 2017, and that there were at least 64,000 outstanding borrower defense applications as of the date of the letter. The commenter noted that the number of unprocessed claims has since risen to 95,000, and that a further delay of the 2016 final regulations will exacerbate the lack of expediency in the Department's borrower defense discharge process to the detriment of borrowers who continue to wait for relief.

Discussion: The Department does not agree that borrowers will be significantly harmed by changing the effective date of the 2016 final regulations to July 1, 2019. While the Department acknowledges that certain benefits of the 2016 final regulations will be delayed, it has determined that those benefits are outweighed by the administrative and transaction costs for regulated entities and borrowers of having those regulations go into effect only to be changed a short while later. First, the 2016 final regulations did not create the borrower defense regime but modified the pre-existing borrower defense regulations, in place since 1995. Those pre-existing regulations remain in effect, as does the statute that allows borrowers to assert defenses to repayment. Therefore, borrowers can continue to apply for relief from payment of loans under this existing process, and the Department is committed to processing those applications in a timely manner. Second, the instant rule merely delays the marginal benefits of the 2016 final regulations for a brief period of time (an additional year), it does not revoke them.

The Department does not share the commenters' concern that borrowers will be subject to certain institutions' predatory practices absent the 2016 final regulations. Because the current borrower defense regulations will remain in effect, borrowers will continue to be able to submit claims to the Department and have their claims processed in accordance with the HEA and those current regulations. Borrowers will not need to wait for new rules to go into effect to have a borrower defense claim considered. We do not anticipate that borrowers will be harmed by the current process because we routinely grant forbearances, and stop collection activities on defaulted loans, to borrowers while their discharge claims are under review. We acknowledge the commenter's concern regarding the number of pending claims before the Department. However, in the time since the commenter submitted the comment, the Department has issued decisions on borrower defense claims and we will continue to accept and process borrower defense claims.

In the event that the borrower defense regulations currently being negotiated result in discharge standards for a borrower defense claim different from the current standards, the new standards would apply only to loans first disbursed on or after the effective date of those regulations. Claims filed as to loans first disbursed before July 1, 2019, which would include currently pending claims and claims filed between the date of this final rule and July 1, 2019, will continue to be processed under the current standard for borrower defense claims.

We further disagree with commenters who claimed that the July 1, 2019 effective date would harm borrowers because the Federal standard established in the 2016 final regulations would not be in effect. As we noted in the 2016 final regulations, the Federal standard was designed to address much of the conduct covered by the State law-based standard so the vast majority of claims made by borrowers whose loans were first disbursed between July 1, 2017, and July 1, 2019, could be evaluated and discharges provided under the current State law-based standard. (81 FR 75937–75941). Any benefits to borrowers associated with having the Federal standard in place during that time period are outweighed by the confusion and disruption that would result from allowing the 2016 final regulations to take effect during a time when they are subject to a legal challenge and when the Department is reevaluating its borrower defense regulations generally. In addition to causing confusion for borrowers, implementing a different standard for a potentially short period of time could delay the processing of claims. One of the goals of the 2016 final regulations was to provide borrowers with more consistency and clarity about their borrower defense claims. (81 FR 39339–39340). Under the circumstances, the delay of the effective date of the 2016 final regulations provides greater clarity and consistency for borrowers, as well as a more streamlined process, than implementation of the rule under the current schedule.

With respect to the comment about a two billion dollar reduction in claims based on the difference in the primary and baseline scenarios from the net budget impact in the 2016 final regulations, as noted in the Regulatory Impact Analysis (RIA), the Department estimates the savings resulting from the delay to be much less. The savings resulting from the delay are mainly driven by slight differences between the State law-based standards in the current regulations and the Federal standards from the 2016 final regulations if they were applicable to loans disbursed between July 1, 2018, and July 1, 2019. Since we have always maintained that there would be significant overlap between the State law-based and Federal standards from the 2016 final regulations, the differences are estimated to be minor. The provisions of the 2016 final regulations pertaining to the process for review and determination of claims were not limited to specific cohorts designated by the effective date so the delay will not result in specific cohorts of borrowers being excluded from the process in effect when the claim is made. Additionally, the figures in the Accounting Statement for the 2016 final regulations would more appropriately be characterized as the costs associated with a single cohort and not the costs associated with a fiscal year. As part of its ongoing efforts to improve the utility of student loan information, the Department has updated its Accounting Statement presentation to better align with OMB Circular A–4, so the effects presented in this document do show the impact on the affected cohorts by fiscal year. The Net Budget Impact section of the RIA presents the assumptions about the effect of the delay.

With regard to the financial protection disclosures, the 2016 final regulations provided that before the disclosures would be required, the Secretary would conduct consumer testing to inform the identification of events for which disclosure would be required and to determine the form of the disclosure. In light of the fact that the 2016 final regulations provided for a future process before the disclosure requirement could be implemented, we do not believe a delayed effective date would significantly change what would occur in this regard during the period of the delay. In other words, because we did not anticipate the financial protection disclosures having a significant impact immediately following the 2016 final regulations' effective date, we believe the incremental effect of delaying those provisions is minimal. We address the comments related to institutional financial responsibility triggers in more detail in the RIA.

Moreover, there are other existing protections for borrowers, including periodic reviews and site visits by Department employees to title IV participating institutions to monitor regulatory compliance; and the activities of the enforcement unit within FSA charged with taking actions against parties participating in title IV, HEA programs to enforce compliance. In addition to the Department, other entities also act to protect students, borrowers, and taxpayers, such as the States through State law enforcement activities and other Federal agencies whose jurisdictions may overlap with, or affect, the higher education sector.

Finally, we note that borrowers may continue to apply for closed school and false certification discharges under the current regulations. With regard to the comments relating to the grounds for false certification discharge, as we stated in the notice of proposed rulemaking that preceded the 2016 final regulations, these changes reflect statutory changes relating to false certification discharges for the lack of a high school diploma or its equivalent and for a disqualifying status. As a result, the Department's authority for false certification discharges on these grounds remains unchanged. (81 FR 39377–39378). In addition, under the current regulations, the Secretary has the authority to provide false certification discharges without an application based on information in the Secretary's possession. The 2016 final regulations explicitly provided that such information may include evidence that the school has falsified the Satisfactory Academic Progress of its students. Because the current regulation does not limit the information that may be considered by the Secretary to provide a false certification discharge without an application, we do not believe a delay of the 2016 revision to this provision will harm borrowers. With regard to a second level of review of a guaranty agency's determinations on closed school discharge requests, borrowers may raise any dispute with a guaranty agency to the Department's Federal Student Aid Ombudsman Group.

The Department acknowledges the commenters' concern that the window under applicable statutes of limitation for some borrowers to file lawsuits may end during the period covered by the delay of the 2016 final regulations' prohibitions on institutions' use of pre-dispute arbitration and class action waiver contractual provisions. However, as acknowledged in the 705 Document, serious questions regarding the legality of these provisions of the final regulations exist and these provisions are among the regulations directly challenged in the CAPPS litigation. The Department thinks that it is likely that the arbitration and class action waiver provisions will be overturned. Should the Department's regulations prohibiting schools from enforcing pre-dispute arbitration agreements and class action waivers be invalidated by the court, there would be significant confusion from borrowers and schools who may have engaged in court litigation on the basis of the prohibitions as to the enforceability of those agreements. We believe the harm from having these provisions take effect in the face of the CAPPS challenge is too great and outweigh any benefits these provisions would have. Further, we note that a borrower may continue to apply for relief, from the Department under the current, State-law based borrower defense to repayment regulations, irrespective of whether the borrower has a pre-dispute arbitration agreement with the school or an agreement to waive involvement in class action lawsuits.

We also note that the pre-dispute arbitration and class action waiver provisions of the 2016 final regulations would require some institutions to change their policies and procedures and to amend their enrollment agreements. In addition, re-training staff and sending notices to borrowers informing them of the changed class action waivers and pre-dispute arbitration provisions would impose administrative costs on institutions. If pre-dispute arbitration requirements and class action waivers are addressed through the current rulemaking process, institutions would need to repeat or reverse these steps to address any requirements that would go into effect on July 1, 2019. Maintaining the regulatory status quo with respect to pre-dispute arbitration agreements and class action waivers will reduce the administrative burden on schools and lessen confusion for borrowers who would be affected by these changes.

The Department further believes that implementing the 2016 final regulations at this time would cause significant confusion around borrower defenses generally that would be unfair to students and schools. Without a delay, if the current rulemaking process results in a different standard for borrower defense claims, there would be three separate sets of standards for borrower defense claims: the State-law based standard that is currently in effect; standards for loans disbursed between July 1, 2018, and July 1, 2019; and standards for loans disbursed on or after July 1, 2019. This would be more confusing for borrowers than the potential for two different standards—one for loans disbursed before July 1, 2019, and one for loans disbursed on or after July 1, 2019. Providing for an effective date of July 1, 2019, will allow the Department and the negotiating committee to develop new borrower defense regulations that would protect students from the most serious predatory practices, provide clear and evenhanded rules for students, colleges and universities to follow, and constrain the costs to taxpayers.

The Department's processing of borrower defense claims is not affected by the effective date of the 2016 final regulations, as the current regulations remain in effect. While the process for reviewing claims and the standard under which they are reviewed would have changed under the 2016 final regulations, the Department does not expect that the length of time required to review individual claims would have changed significantly if the 2016 final regulations had gone into effect as originally scheduled. With regard to group claims, the Department has granted group claims under the existing regulations. While the 2016 final regulations provided a regulatory process for granting group borrower defense claims, the Secretary had and continues to have the authority, and has exercised that authority, to grant group claims under the borrower defense regulations currently in effect.

Changes: None.

Comment: Some commenters claimed that the delay hurts American taxpayers because the 2016 final regulations would hold institutions that commit fraud monetarily accountable for their actions in cases of student loan discharges, rather than requiring taxpayers to absorb the costs of borrower defense discharges.

Discussion: As noted earlier in this section, the delay of the effective date of the 2016 final regulations will allow the Department to develop new borrower defense regulations that may be more beneficial to American taxpayers than the 2016 final regulations. We do not believe the delay will harm American taxpayers because the Department may assess liability for borrower defense claims on schools now, under the current regulations in effect. The financial protection triggers in the 2016 final rule were designed to increase the likelihood of recovering funds from institutions as claims come in over the life of the cohort, especially from institutions that might have significant exposure or that end up closing as a result of the financial risks identified by the triggers. The Department estimated that recovery activity would ramp up as the triggers were implemented, as reflected in the recovery assumption in the 2016 final rule (81 FR 76057), so a delay in the early years of recovery activity is not estimated to have a significant effect, as indicated by the change in the recovery assumption presented in this RIA. With the Department's authority to seek recoveries unchanged because of the change in effective date, we believe the possibility of slightly reduced recovery rates for a short period is warranted to further the goals of providing clarity by maintaining the regulatory status quo during this interim period. We note that the borrower defense procedural rule, which provided a regulatory framework for assessing liabilities against schools for which a borrower defense claim was successful, was published in the **Federal Register** on January 19, 2017, and those regulations have been effective since that date.

Changes: None.

Comment: One commenter asserted that the data provided for the impact of the delays in the effective date of the 2016 final regulations were inadequate because the cost of providing financial protection was not quantified in the RIA of the 2016 final regulations and the NPRM preceding this final rule; and there is no additional data to estimate the costs institutions may avoid from the delayed effective date of the financial protection provisions.

Another commenter pointed out that if the effective date of the 2016 final regulations was not delayed, the Department estimated that $381 million in loans would be forgiven between July 1, 2017, and July 1, 2019. The commenter noted that the Department does point out that the Federal government will save this money by delaying the effective date but does not point out that borrowers will end up absorbing the cost. The commenter noted that the Department could change the current regulations and not include the new closed school discharge provisions, and noted that even a temporary delay causes financial stress that can trap some borrowers in poverty. Moreover, borrowers who default on their loans because they are not discharged would not be eligible for further financial aid.

Discussion: The Department appreciates the comments about the RIA for the NPRM preceding this final rule. In that RIA, the Department acknowledged that the costs of providing financial protection were not quantified in the RIA for the 2016 final regulations and that there is no additional data to estimate those costs. That fact, however, does not mean that we have not sufficiently justified this delay.

As discussed in the RIA for this final rule with respect to the delay of the financial protection provisions, several factors will affect the cost for individual institutions, including: the level of institutional conduct giving rise to borrower defense claims, the applicability of certain financial protection triggers, the financial strength of the institution, the manner in which the institution provides financial protection to the Department, and the potential development of financial products aimed at providing this protection. The Department believes that individual institutions are best positioned to evaluate their potential exposure to borrower defense claims, their financial relationships with parties who could provide financial protection, and the cost of providing protection. Along with the uncertainty about the projected amount of claims as recognized in the different sensitivity runs presented in the RIA for the 2016 final regulations, the Department believes that quantifying the cost of providing financial protection would provide a false sense of precision. Rather than producing a number that would be inapplicable to most institutions, the Department focused on explaining the regulations and providing data about the provisions for which it had information such as the cohort default rate (CDR), 90/10 revenue requirement, fluctuation in title IV aid, withdrawal rate, and accreditor action triggers. The 2016 final regulations did not present information about the provisions related to U.S. Securities and Exchange Commission or stock exchange actions, gainful employment, the withdrawal of owner's equity from an institution, teach-outs, State licensing, financial stress tests, an institution's violation of a loan agreement, or pending borrower defense claims. Additionally, given that the known borrower defense claims at the time were from a small number of institutions and many had not been approved or disapproved, it is unclear how the distribution of successful borrower defense claims at institutions would match up with the distribution of institutions' performance on the financial responsibility triggers for which the Department had some information.

As is further discussed in the RIA for this final rule, the Department recognizes that the delayed effective date will postpone the impact of the financial protection provisions on institutions. This impact was not quantified for the same reasons described above, but would be a fraction of the total protection expected to be generated under the rule as some of the triggers are tied to the production of certain performance measures and would not have kicked in immediately under the 2016 regulations. Successful claims made by borrowers will be paid regardless of the limited delay in the date for requiring institutions to provide financial protection, and the Department believes the cost to taxpayers of the slightly reduced recoveries described in the Net Budget Impact in the RIA is justified by the benefits of reconsidering the financial protection provisions and appropriately balancing the costs to institutions with protection of borrowers and taxpayers.

With respect to the comment about closed school discharges, the Department disagrees with the claim that borrowers will bear a $381 million cost because of the delay. As noted in the NPRM, the $364 million savings estimated for FY 2017 occurred because the Department did not execute the modification for cohorts 2014–2016 anticipated in the President's Budget (PB) for 2018 because of the change of the effective date of the 2016 final regulations. The difference in the $381 million estimated for the three-year automatic discharge in the 2016 final regulations and the $364 million estimate for the modification in this rule is that the $381 million was based on PB 2017 loan model assumptions and the modification to be executed was based on the PB 2018 assumptions. Under the credit reform scoring rules applicable to the student loan programs, the unexecuted modification created savings that needed to be recognized. This budget scoring requirement does not affect borrowers or their eligibility for a closed school discharge. Borrowers can avoid any uncertainty about the timing of receiving a closed school discharge or costs associated with a delay in receipt of such discharge by submitting a closed school discharge application at any time. Any costs or savings associated with changes in the automatic discharge provision as a result of the current negotiated rulemaking are outside the scope of the analysis of the delay, and we will address any related issues raised by commenters in response to the NPRM for the proposed rule resulting from the current rulemaking process.

Changes: None.

Comment: Some commenters expressed their belief that the delay is not aligned with Congressional intent, citing 20 U.S.C. 3402, and is contrary to the public interest.

Discussion: In 20 U.S.C. 3402, Congress states that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal government to coordinate its education activities more effectively.

In its execution of these responsibilities, and consistent with 20 U.S.C. 3402, the Department has determined that the public interest is best served by a delay in the effective date of the 2016 final regulations.

Changes: None.

Comments: Some commenters expressed concerns that the Department did not follow required rulemaking processes in delaying the effective date of the 2016 final regulations. These concerns alleged specific statutory and

APA violations. First, commenters stated that the Department's justification to waive negotiated rulemaking was insufficient. Second, commenters wrote that we did not provide sufficient justification for the delay. One commenter said that the NPRM fails to identify any specific deficiencies in the 2016 final regulations, or findings and rationale that support revising those regulations. Third, a commenter stated that the minor cost savings detailed in the RIA were insufficient justification to delay the rule. In addition, one commenter stated that further negotiated rulemaking on the 2016 final regulations was redundant and wasteful.

Discussion: The Department adhered to all applicable laws in promulgating this final rule. First, with regard to waiver of negotiated rulemaking, section 492(b)(2) of the HEA provides that the Secretary may waive negotiated rulemaking if she determines that there is good cause to do so, and publishes the basis for such determination in the **Federal Register** at the same time as the proposed regulations in question are first published. In the NPRM, the Department properly articulated the good cause supporting our waiver of the HEA's negotiated rulemaking requirement. The NPRM explained that the original catalyst for the delay was the CAPPS litigation, filed on May 24, 2017, and that it would not have been possible for the Department to engage in negotiated rulemaking and publish final regulations after that date (much less after October 24, 2017, the date the NPRM was published), and prior to July 1, 2018 (the current effective date of the 2016 final regulations). Negotiated rulemaking on this discrete issue simply was not practicable. It is a time-consuming and resource-intensive process, and could not practicably be completed by July 1, 2018.

Negotiated rulemaking typically takes the Department well over 12 months to complete. The statute requires the Department to hold public hearings before commencing any negotiations. Based upon the feedback the Department receives during the hearings, the Department then identifies those issues on which it will conduct negotiated rulemaking, announces those, and solicits nominations for non-Federal negotiators. Negotiations themselves are typically held over a 3 month period. Following the negotiations, the Department then prepares a notice of proposed rulemaking and submits the proposed rule to OMB for review. The proposed rules are then open for public comment for 30–60 days. Following the receipt of public comments, the Department then prepares a final regulation and submits it to OMB for review.

With the completion of all of these steps taking well over 12 months, it would not have been feasible for the Department to complete negotiated rulemaking on the delayed effective date by July 1, 2018. Indeed, it would not have been feasible even if the Department had commenced the process on May 24, 2017, when it learned of the CAPPS litigation. Thus, the Department had good cause to waive that requirement.

Regarding the comment that we did not provide sufficient justification to propose delay of the effective date of the 2016 final regulations, the Department is in the process of developing proposed revisions to the borrower defense regulations through the negotiated rulemaking process. As a result of the timing of the negotiated rulemaking and the effect of the master calendar requirement, any regulations resulting from the negotiated rulemaking cannot become effective before July 1, 2019. Therefore, the Department proposed in the NPRM to delay the effective date of the 2016 final regulations to July 1, 2019. This would prevent a scenario in which the 2016 final regulations might become effective for a short period of time before new regulations resulting from the current borrower defense rulemaking process take effect, a result which likely would lead to a great deal of confusion and difficulty for borrowers and schools alike. Accordingly, the Department articulated a reasonable and sufficient justification to propose a delay of a final rule.

Also with regard to the comment that the NPRM fails to identify any specific deficiencies in the 2016 final regulations, the APA and applicable case law require only that an agency's rulemaking justify the particular action or actions to be taken by that rule. This final rule does not amend the substance of the 2016 final regulations; it merely changes the effective date of the 2016 final regulations and is fully supported based on the information provided in the NPRM and in this final rule. Amending the substance of the 2016 final regulations (or prior borrower defense regulations) would require a separate rationale. We are separately conducting a negotiated rulemaking process to address the substance of the borrower defense regulations, and any resulting NPRM will provide a rationale for proposed changes.

The NPRM at issue here proposed only a delay of the effective date of the 2016 final regulations; it did not propose any other changes and therefore the Department was not required to solicit comment on any matters other than the effective date. Also contrary to the commenter's assertions, the number of comments received in response to an NPRM has no bearing on the sufficiency of the Department's solicitation of public engagement. The APA requires the Department to "give interested persons an opportunity to participate" and consider "the relevant matter presented," not to reach a certain threshold of comments before it may proceed with the rulemaking process. 5 U.S.C. 553(c). The Department requested comments that covered the scope of our rulemaking—delay of an effective date—and considered each applicable comment received in promulgating this final rule.

The regulatory impact analysis in the NPRM estimated the quantified economic effects and net budget impact of the delay, and projected that the delay would result in a net cost savings. However, the delay was not proposed solely on the basis of those calculations. Executive Order 13563 requires the Department to, in part, "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)." Just as the commenters note harms to borrowers that cannot be definitively quantified, not all benefits of the delay are measurable in monetary terms. Delaying the effective date as proposed in the NPRM will preserve the regulatory status quo while the Department reconsiders the substance of its regulations governing borrower defense, preventing borrowers and institutions alike from being subject to an uncertain, quickly changing set of regulatory requirements. The Department undertook the required analysis and determined that the benefits of the delay would justify the costs.

With regard to the comment about redundancy and wastefulness, we have substantive concerns about the 2016 final regulations. In light of that, negotiated rulemaking and publication of an NPRM with request for further public comment is the statutorily required path to ensure public input and potentially make substantive changes to the Department's regulations. After careful consideration, we determined the benefits of proceeding with negotiated rulemaking to properly analyze the borrower defense regulations outweighed the costs of doing so.

Changes: None.

Comment: Some commenters also argued that the CAPPS lawsuit is an inappropriate basis for the delay because CAPPS' litigation addresses only some of the regulatory provisions being delayed, but the notices effectuating the delay included many regulatory provisions, including those related to closed school discharge.

Discussion: The CAPPS litigation is not the basis for the delay proposed in the NPRM, although it was the reason for the initial delay of the 2016 final regulations' effective date. We further note that contrary to the commenter's assertion, CAPPS' complaint expressly prays for an order declaring ''that the entirety of the Final Rule is contrary to the Constitution,'' and asks that the Court enjoin the Department from ''taking any action whatsoever pursuant to the final regulations,'' indicating that its challenge is broader than the commenters portray.

Changes: None.

Comment: Some commenters supported the proposal in the NPRM. One commenter asserted that the 2016 final regulations' intention missed the mark and created an unnecessarily complex and costly system that is confusing to students, unfair to institutions, and puts taxpayers on the hook for huge costs. The commenter also suggested that maintaining the regulatory status quo under the 1994–95 standard is critical to the public interest and that requiring institutions to use their time and finances to implement the expensive 2016 final regulations while another rulemaking is occurring would be burdensome and contrary to the goals of Executive Order 13777, which is intended to help alleviate the regulatory burdens on the American people. This same commenter emphasized that the delay will help to maintain an existing, easily understood process—especially for students seeking redress under the current State law-based standard.

Commenters asserted that the delay of selected provisions of the 2016 final regulations would mitigate uncertainty about the potential impact of the regulations, especially in light of ongoing litigation, the master calendar requirement, and ongoing negotiated rulemaking.

One commenter asserted that the Department properly used Section 705 of the APA to avoid substantial harm to students. The commenter suggested that if some of the provisions of the 2016 final regulations went into effect and were quickly struck down by a court, the result would be chaotic, particularly if the subsequent regulatory framework change occurred in the course of an award year. The commenter asserted further that the ongoing negotiated rulemaking is justified based on the need to improve the borrower defense regulations as part of a regulatory reset. This commenter argued that because the reset could lead to significant changes, it would be nonsensical, even aside from the litigation, to implement new regulations for a full or for part of an award year only to change them after the current negotiated rulemaking process is complete.

One commenter asserted that the arbitration and class action provisions in the 2016 final regulations would require institutions to incur significant costs in changing multiple policies and procedures and amending existing and future enrollment agreements, re-training staff, litigating new cases, and sending notices to borrowers that existing class action waivers or arbitration provisions will not be enforced. According to the commenter, the implementation of these requirements would divert resources from students and would require the further diversion of resources if schools were required to retrain staff and litigate the effects of the temporary ban on past agreements with students, including those signed during the interim period, if the regulations were to change as a result of the current rulemaking process.

The commenter also stated that the financial responsibility provisions that require, in some circumstances, an institution to obtain a letter of credit or some type of financial protection would impose a significant burden on schools because a letter of credit is difficult to obtain and the additional cost could cause many schools, including some historically black colleges and universities, to close. The commenter also argued that the delay is appropriate because schools may need to establish different compliance measures if the current negotiated rulemaking process modifies the financial responsibility provisions. In such event, the commenter stated that the temporary implementation of these provisions would lead to potentially unnecessary compliance and training costs for schools to accommodate different rules.

The commenter also argued that the repayment rate provisions which would require proprietary schools with a certain loan repayment rate to distribute a warning to students and prospective students might damage the reputation of such schools and impact such schools' ability to draw students and raise funds. The commenter argued that the delay would prevent any disruptions as changes to the requirements are considered during the negotiated rulemaking process.

Finally, the commenter stated its view that given the significant expansion of borrower defense under the 2016 final regulations and the changes to the borrower defense regulations that may result from the Department's current rulemaking effort, the additional delay is required to prevent confusion for students and the expenditure of school resources on implementing the different borrower defense standards and procedures when those resources could otherwise be used to enhance student experiences.

Discussion: While comments regarding the effect of the 2016 final regulations are outside of the scope of the NPRM, the Department agrees that the delay will provide clarity for institutions and students, as well as save institutions from incurring the costs and expending the resources necessary to comply with the requirements under the 2016 final regulations that would potentially be in effect for only a short period of time.

Changes: None.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

The Department estimates the quantified annualized economic and net budget impacts of the delay of the effective date to be −$26.9 million in reduced costs to institutions and the Federal government. These reduced costs result from the delay of the borrower defense provisions of the 2016 final regulations as they would apply to the 2017 to 2019 loan cohorts, as well as from the delayed paperwork burden on institutions and the delayed execution of the closed school automatic discharge. This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final rule 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 on 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 this final rule only on a reasoned determination that its benefits justify its costs. Based on the analysis that follows, the Department believes that this final rule is consistent with the principles in Executive Order 13563.

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

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action.

The quantified economic effects and net budget impact associated with the delayed effective date are not expected to be economically significant.

Effects of Delay

As indicated in the RIA published with the 2016 final regulations on November 1, 2016, those final regulations were economically significant with a total estimated net budget impact of $16.6 billion over the 2017–2026 loan cohorts in the primary estimate scenario, including a cost of $381 million for cohorts 2014–2016 attributable to the provisions for a three-year automatic closed school discharge.

However, as noted in the RIA for the NPRM published October 24, 2017, the analysis of the net budget impact in this final rule is limited to the effect of delaying the effective date of the 2016 final regulations from July 1, 2018, to July 1, 2019, and does not account for any potential changes in the 2016 final regulations or administrative updates to existing processes and procedures related to borrower defense claims.

As the net budget impact is based on the net present value of the cash flows of the relevant cohorts over 40 years, delaying the 2016 final regulations until July 1, 2019, will have limited effect, as discussed below.

Even with the change in the effective date to July 1, 2019, borrowers will still be able to submit claims. The provisions of the 2016 final regulations pertaining to the process for review and determination of claims were not limited to specific cohorts designated by the effective date so the delay will not result in specific cohorts of borrowers being excluded from the process in effect when the claim is made. Loans made before July 1, 2017, were always subject to the State law-based standard, and borrowers' ability to bring claims under that standard is unchanged by the delay. For claims filed after the effective date of the regulations for loans made on or after July 1, 2019, the Federal standard established in the 2016 final regulations would apply. As discussed previously, the Department interprets all references to ''July 1, 2017'' in the text of the final regulations to mean the effective date of the final regulations. As a result, the delay in the effective date means that loans made between July 1, 2018, and June 30, 2019, will be subject to the current State law-based standard. As we noted in the 2016 final regulations, the Federal standard was designed to address much of the conduct already covered by the State law-based standard, so the vast majority of discharge claims associated with loans made between July 1, 2017, and the delayed effective date could be made under the current, State law-based standard as well. (81 FR 76057)

Some commenters suggested that borrowers will be harmed by the delay, either through uncertainty as to how claims will be handled, the application of statutes of limitation, or processing delays. Commenters also expressed concerns about the processing of existing claims and the effect of the delay on their resolution. The Department does not agree that the delay of the effective date of the 2016 final regulations will affect the processing of existing claims. Existing claims were always subject to the State law-based standard in the current regulations. Efforts to improve the efficiency of claims processing are ongoing and are not contingent upon implementation of the 2016 final regulations.

The Department maintains that the loans affected by the delay from July 1, 2018 to July 1, 2019 are those issued between those dates and for which any potential borrower defense claims will now be evaluated under the State law-based standard. These loans have not been made yet, and the NPRM and this final rule clarify that the State law-based standard will apply to them—this provides borrowers certainty regarding the standard that will be applied to their claims. Some commenters noted the difference in the annualized estimate for the primary and baseline scenarios and suggested the delay will cost borrowers approximately two billion dollars. As explained in the *Net Budget Impact,* the Department estimates the cost of the delay to be much less than two billion dollars given that there is significant overlap between the current State law-based standard and the Federal standard from the 2016 final regulations and that claims associated with these loans will be handled under the process in place when their claim is made. The Department does not believe that the delay will result in reversion to the baseline scenario assumptions for the borrower percentage so the effect on borrowers will be much lower than the commenters suggested. Additionally, the figures in the Accounting Statement for the 2016 final regulations would more appropriately be characterized as the costs associated with a single loan cohort and not the costs associated with a fiscal year, so the change in the effective date would not result in the two billion dollar difference as it reflects just one year of the 40-year life of the cohort. The Department has updated its Accounting Statement in this final rule so the effects presented in this RIA show the impact on the affected loan cohorts by fiscal year.

As discussed in the *Analysis of Comments and Changes* the potential effects on borrowers include possible reduced access to courts from the delay in the arbitration and class action waiver provisions while statutes of limitation are running. We think it is likely that these provisions will be overturned in the CAPPS litigation and are concerned about the confusion to borrowers that would result. We believe the harm that would occur outweighs any benefits of these provisions. We note that a borrower may submit a borrower defense claim to the Department with respect to his or her Federal loans at any time without regard to arbitration agreements or class action waiver clauses in agreements between the borrower and the school, as the loan is between the Federal government and the borrower.

In addition to borrowers, institutions are also affected by the delayed effective date. As indicated in the RIA for the 2016 final regulations, institutions would bear the major costs of compliance, paperwork burden, and providing financial protection to the Department. In terms of cost savings for institutions, the estimated annual paperwork burden was approximately $9.4 million in the first year after the 2016 final regulations were to take effect. In the revised scenario developed to estimate the effect of this delay in the effective date, estimated transfers from institutions to students, via the Federal government, would be reduced by approximately $9.3 million for the 2017 and 2018 loan cohorts because of the slight reduction in claims from the application of the State law-based standard and the change in the effective date of the financial protection provisions as reflected in the assumptions presented in Table 1. The costs of providing financial protection were not quantified in the RIA for the 2016 final regulations, and the Department has no additional data to estimate costs institutions may avoid from the delayed effective date of the financial protection provisions. Given the limited history of borrower defense claims and recovery actions and numerous factors that affect the cost for individual institutions, the Department believed that quantifying the cost of providing financial protection would provide a false sense of precision. As noted in the 2016 final regulations and the NPRM, there are several ways for institutions to provide financial protection to the Department, including some that may be developed in the future. The price of this protection would likely vary by the size of the institution and the institution's existing financial relationships with parties who could provide the financial protection. Other key elements that contribute to the uncertain cost of financial protection overall are the distribution of borrower defense claims, the type of institutions involved, the applicability of specific financial protection triggers, and the Department's pursuit of recoveries. The Department recognizes that the delayed effective date will postpone the impact of the financial protection provisions on institutions. This would be a fraction of the total protection expected to be generated under the rule as some of the triggers are tied to the production of certain performance measures such as gainful employment rates and there would be some time, possibly months, between the effective date and the next release of rates. The recovery assumption always assumed some ramping up of financial protection as different metrics became available for application, so the change in effective date will affect the early years when recoveries were assumed to be smaller. Borrowers are not affected by institutions' delay in incurring the costs of financial protection, and the Department believes it is worth the cost to taxpayers from reduced recoveries described in the Net Budget Impact in the RIA to reconsider the financial protection provisions and appropriately balance the costs to institutions with protection of borrowers and taxpayers.

Net Budget Impact

As described in the NPRM, to estimate the net budget impact of the delay in the effective date to July 1, 2019, the Department developed a scenario that revised the primary estimate assumptions from the 2016 final regulations for the affected 2017 to 2019 cohorts, as was done for the one-year delay described in the IFR. The Department has reviewed the comments it received, particularly those about the potential impacts and estimation of the effects of the delay and responded in the Analysis of Comments and Changes section and this RIA. However, the Department believes that the assumptions for the scenario to estimate the net budget impact on the student loan program from the delay from July 2018 to July 2019 remain appropriate and reasonable.

As before, the Department applies an assumed level of school conduct that could generate borrower defense claims, borrower claims success, and recoveries from institutions (respectively labeled as Conduct Percent, Borrower Percent, and Recovery Percent in Table 1) to the PB 2018 loan volume estimates to generate the estimated net borrower defense claims for each loan cohort, loan type, and sector. The assumptions for the primary scenario from the 2016 final regulations were the basis for the PB2018 baseline that assumed the final regulations would go into effect on July 1, 2017. The scenario developed for the NPRM is designed to capture the incremental change from the one-year delay in the IFR associated with the further one-year delay in the effective date to July 1, 2019. Compared to the scenario developed for the IFR, recoveries are reduced by an additional two percent for the 2017 and 2018 cohorts, all of the 2018 cohort is subject to the State law-based standard, and the affected portion of the 2019 cohort is subject to the current, State law-based standard and reduced recoveries at the five percent level used for the one-year delay in the IFR. Table 1 presents assumptions for the primary estimate from the final regulations and the revised estimate for the delay from July 1, 2018 to July 1, 2019, in the effective date. In this scenario, the conduct percent is 90 percent of the primary scenario from the final regulations and the borrower percent is the same. The financial protection provided was always expected to increase over time, so the delayed effective date in the near term is not expected to significantly affect the amount of recoveries over the life of any particular loan cohort, limiting any net budget impact from the delay. To estimate the potential reduction in recoveries related to the proposed delayed effective date, we reduced recoveries for the affected portion of the 2017 and 2018 cohorts by seven percent for the private not-for-profit and proprietary sectors and by five percent for the 2019 cohort. As in the 2016 final regulations and the IFR, recoveries from public institutions were held constant at 75 percent across scenarios.

TABLE 1—REVISED ASSUMPTIONS FOR ONE-YEAR DELAY FROM JULY 1, 2018 TO JULY 1, 2019

Cohort	2017		2018		2019	
	Pub/Priv NFP	Prop	Pub/Priv NFP	Prop	Pub/Priv NFP	Prop
Conduct Percent:						
Final Primary	3.0	20	2.4	16	2.0	13.6
Delay to 2019	2.7	18	2.16	14.4	1.8	12.24
Borrower Percent:						
Final Primary	35	45	36.8	47.3	36.8	47.3
Delay to 2019	35	45	36.8	47.3	36.8	47.3
	Pub	Priv/Prop	Public	Priv/Prop	Pub	Priv/Prop
Recovery Percent:						
Final Primary	75	23.8	75	23.8	75	23.8
Delay to 2019	75	22.134	75	22.134	75	24.871

The net budget impact associated with these effects of the one-year delay in the effective date on the borrower defense provisions only is approximately −$46.1 million from the 2017 to 2019 loan cohorts.

As the amount and composition of borrower defense claims and estimated recoveries over the lifetime of the relevant loan cohorts are not expected to change greatly due to the delayed effective date, the Department does not estimate an economically significant net budget impact from the delay itself, with a potential net budget impact related to borrower defense claims of −$46.1 million in reduced costs for the affected cohorts. This represents the incremental change associated with the one-year delay from July 1, 2018, to July 1, 2019. If compared to the PB 2018 baseline, the savings would be approximately −$78.8 million.

The closed school automatic discharge provisions were the other significant source of estimated net budget impact in the 2016 final regulations. Under credit reform scoring, the modification to older cohorts for the automatic discharge provision estimated to cost $364 million was expected to occur in FY 2017 in the PB 2018. As a result of the delay in the effective date, the Department will not execute the modification in FY 2017.

Moving the execution of the modification beyond FY 2017 will require a new cost analysis with economic assumptions from the fiscal year of the execution. This will result in a change of cost, but at this point it is not possible to know the discount rates in future fiscal years, so the cost of the modification will be determined in the year that it is executed. While the actual cost of the future modification cannot be determined at this time, the Department did approximate the effect of the delay by shifting the timing of the relevant discharges back by a year and recalculating a modification using the discount rates and economic assumptions used for the calculation of the PB2018 modification. When calculated in this manner, the delay in the modification to July 2018 described in the IFR resulted in estimated savings of less than $10 million. Using the same approach, the delay to July 2019 is expected to save approximately $15 million above the savings from the initial one-year delay.

As the delay does not change the substance of the automatic discharge, we would expect the amount and composition of loans affected by the automatic discharge not to change significantly. The closed school three-year automatic discharge provisions were applicable to loans made on or after November 1, 2013, and were not linked to the effective date of the final regulations. Therefore, delaying the effective date of those provisions will not change the set of loans eligible for this automatic discharge. Additionally, borrowers would have the ability to apply for a closed school discharge before July 1, 2019, if they did not want to wait for the automatic discharge to be implemented. For future cohorts, the delay is not significant as the three-year period will fall beyond the delayed effective date. Any significant change to the estimated net budget impact associated with the closed school automatic discharge depends on any substantive changes made to the provisions as a result of the current rulemaking process and changes to economic assumptions when the modification is executed.

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have determined that this rule will result in cost savings. Therefore, this rule would be considered an Executive Order 13771 deregulatory action.

Accounting Statement

In evaluating whether a regulation is economically significant, a key consideration is whether the annual effect in any given year is over $100 million.

To evaluate this, the Department looked at the difference in the undiscounted cash flows related to the death, disability, and bankruptcy (DDB) claims in which borrower defense claims are included for the one-year delay established in the IFR and the one-year delay scenario established in this notice and described under the heading ''Net Budget Impact''. The difference from subtracting this delay scenario from the IFR one-year delay scenario for the 2017 to 2019 loan cohorts is summarized in Table 2.

TABLE 2—DIFFERENCE IN UNDISCOUNTED NET CASHFLOWS FOR THE 2017 TO 2019 LOAN COHORTS FROM THE ONE-YEAR DELAY IN 2016 BORROWER DEFENSE RULE TO JULY 1, 2019

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Change in DDB Cashflow	159	7,489	496,637	637,361	538,468	6,004,802	9,525,520	4,668,143	2,156,009	3,003,657

Table 3 shows the effects when those differences in the DDB cashflows are discounted at 7 and 3 percent and annualized.

Category	Benefits	
Institutions may not incur compliance costs or costs of obtaining financial protection until the rule is in effect	Not Quantified	
Category	**Costs**	
	7%	3%
Continued use of State-law based standard Delay in providing consumer information about institutions' performance and practices Potential decreased awareness and usage of closed school and false certification discharges	Not Quantified	
Savings associated with delay in compliance with paperwork requirements	−9.5	−9.51
Category	**Transfers**	
	7%	3%
Reduction in transfers from the Federal government to affected borrowers in the 2017 to 2019 cohorts that would have been partially borne by affected institutions via reimbursements	−3.5	−3.8
Reduced reimbursements from affected institutions to affected students, via the Federal government as loan cohorts 2017 to 2019 are subject to the existing borrower defense regulation	−1.2	−1.3
Delay in closed school automatic discharge implementation from 2018 to 2019	−14.8	−14.8

Paperwork Reduction Act of 1995

As indicated in the Paperwork Reduction Act section published in the 2016 final regulations, the assessed estimated burden was 253,136 hours, affecting both institutions and individuals, with an estimated cost of $9,458,484. The table below identifies the regulatory sections, OMB Control Numbers, estimated burden hours, and estimated costs of those final regulations.

Regulatory section	OMB Control No.	Burden hours	Estimated cost $36.55/hour institution, $16.30/hour individual
668.14	1845–0022	1,953	71,382
668.41	1845–0004	5,346	195,396
668.171	1845–0022	3,028	110,673
668.175	1845–0022	60,560	2,213,468
682.211	1845–0020	5,784	211,405
682.402	1845–0020	1,838	67,179
685.222	1845–0142	249 (Individuals)	4,059
685.222	1845–0142	800 (Institutions)	29,240
685.300	1845–0143	179,362	6,555,681
Total		258,920	9,458,484
Cost savings due to delayed effective date excluding 682.211 early implementation allowed.		253,136	9,247,079
Burden remaining		5,784	211,405

This final rule delays the effective date of the implementation of all of the cited regulations and will result in a cost savings in the total amount of $9,458,484. However, 34 CFR 682.211(i)(7) which was included in the 2016 final regulations, regarding mandatory forbearance based on a borrower defense claim, with an estimated 5,784 hours and $211,405 cost, was designated for early implementation. Lenders may have elected early implementation and, therefore, those specific costs and hours remain applicable and have been subtracted from the overall estimated cost savings. Based on the delayed effective date of July 1, 2019, the revised estimated annual cost savings to institutions and individuals is $9,247,079 ($9,458,484 − $211,405) with an estimated burden hours savings of 253,136 (258,920 − 5,784).

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Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, 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 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Parts 682 and 685

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

Dated: February 9, 2018.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2018–03090 Filed 2–9–18; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0435; FRL–9973–23—Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Infrastructure State Implementation Plan Requirements for the National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Arkansas to address the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 2006 and 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), 2008 lead (Pb) NAAQS, 2008 ozone (O_3) NAAQS, 2010 nitrogen dioxide (NO_2) NAAQS, and the 2010 sulfur dioxide (SO_2) NAAQS. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS. CAA sections 110(a)(1) and (2) require each state to make a new SIP submission within three years after EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP or ''i-SIP.''

DATES: This final rule is effective on March 16, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0435. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Nevine Salem, (214) 665–7222, *salem.nevine@epa.gov.* To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our November 20, 2017 proposal (82 FR 55065). In that action, we proposed to approve the Arkansas i-SIP submittal dated March 24, 2017 to address the requirements of sections 110(a)(1) and (2) of the Act for the 2006 and 2012 $PM_{2.5}$ NAAQS, 2008 lead (Pb) NAAQS, 2008 ozone (O_3) NAAQS, 2010 nitrogen dioxide (NO_2) NAAQS, and the 2010 sulfur dioxide (SO_2) NAAQS. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS. CAA sections 110(a)(1) and (2) require each state to make a new SIP submission within three years after EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS.

We received an anonymous public comment on December 18, 2017 on the proposed rulemaking action. The comment is posted to the docket (EPA–R06–OAR–2017–0435). The commenter raised concerns about the accuracy of agricultural and wild fires emissions inventory. Such comment is irrelevant and is outside the scope of this specific rule making action.

II. Final Action

As detailed in the proposal action, EPA is approving the majority of the March 24, 2017, Arkansas i-SIP submittal, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2006 $PM_{2.5}$, 2008 Pb, 2008 O_3, 2010 SO_2, 2010 NO_2, and 2012 $PM_{2.5}$ NAAQS. Table 1 outlines the specific actions [1] we are approving in this final rulemaking.

TABLE 1—FINAL ACTIONS ON THE ARKANSAS INFRASTRUCTURE SIP SUBMITTAL FOR VARIOUS NAAQS

Element	2006 $PM_{2.5}$	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2	2012 $PM_{2.5}$
(A): Emission limits and other control measures	A*	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A*	A	A	A	A	A
(C)(i): Enforcement of SIP measures	A*	A	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	A*	A	A	A	A	A
(C)(iii): Permitting program for minor sources and minor modifications	A*	A	A	A	A	A

[1] Note that regarding CAA 110(D)(i)(II) Visibility Protection—(''prong 4'') for the 2006 $PM_{2.5}$, EPA previously proposed disapproval at 80 FR 38419 (July 6, 2015) for an earlier SIP submittal dated September 21, 2009. However, in the State's March 24, 2017 submittal, Arkansas submitted revisions to address CAA 110(D)(i)(II) (''prong 4'') for the 2006 $PM_{2.5}$ that supersede the September 21, 2009 submittal. In Table 1 below, we are making an administrative correction to the table as was originally proposed. We are making an administrative correction to note a minor change from ''No submittal'' to ''No action'' for the 2006 $PM_{2.5}$ (''prong 4''). We will address the 2006 $PM_{2.5}$ NAAQs 110(a)(2)(D)(i)(II)(''prong 4'') element in a future rule making.