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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AN82

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of Actuaries and published in the **Federal Register** on May 20, 2019, as required by the United States Code.

DATES: This rule becomes effective on October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On May 20, 2019, OPM published at 84 FR 22915, a notice in the **Federal Register** to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the revisions to the actuarial assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act. As a result, on May 28, 2019, at 84 FR 24401, OPM published a proposed rule in the **Federal Register** to revise the table of reduction factors in appendix A to subpart C of part 843, Code of Federal Regulations, for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under 5 CFR 843.309. OPM received no written comments on the proposed rule.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is not a significant regulatory action, under Executive Order 12866 and was not reviewed by OMB. This rule is not a major rule under 5 U.S.C. 804.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rule is not a significant regulatory action under E.O. 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA Application for Death Benefits (FERS)/Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death (FERS), 3206–0172. The public reporting burden for this collection is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 16,751 hours. The systems of record notice for this collection is: OPM

SORN CENTRAL–1–Civil Service Retirement and Insurance Records.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. In § 843.309, revise paragraph (b)(2) to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2) For deaths occurring on or after October 1, 2019, 36 equal monthly installments of 2.96358 percent of the amount of the basic employee death benefit.

* * * * *

■ 3. Revise appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

Age of separated employee at birthday before death	Multiplier
With at least 10 but less than 20 years of creditable service—	
26	.0998
27	.1068
28	.1138
29	.1214
30	.1291
31	.1375
32	.1463
33	.1555
34	.1651
35	.1755
36	.1867
37	.1986
38	.2113
39	.2247
40	.2390
41	.2540
42	.2701
43	.2875
44	.3057
45	.3252
46	.3460
47	.3680
48	.3917
49	.4171
50	.4445
51	.4739
52	.5055
53	.5393
54	.5758
55	.6151
56	.6578
57	.7037
58	.7536
59	.8076
60	.8663
61	.9302
With at least 20, but less than 30 years of creditable service—	
36	.2153
37	.2291
38	.2436
39	.2592
40	.2756
41	.2930
42	.3116
43	.3316
44	.3527
45	.3752
46	.3992
47	.4247
48	.4521

Age of separated employee at birthday before death	Multiplier
49	.4814
50	.5131
51	.5470
52	.5834
53	.6225
54	.6646
55	.7100
56	.7592
57	.8123
58	.8698
59	.9322

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
With at least 30 years of creditable service—		
46	.4912	.5254
47	.5226	.5591
48	.5564	.5953
49	.5926	.6340
50	.6316	.6757
51	.6733	.7203
52	.7181	.7683
53	.7663	.8199
54	.8182	.8754
55	.8741	.9353
56	.9346	1.0000

[FR Doc. 2019–20124 Filed 9–20–19; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 54, 56, and 70

[Doc. #AMS–LP–18–0095]

Voluntary Grading of Meats, Prepared Meats, Meat Products, Shell Eggs, Poultry Products, and Rabbit Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is amending its regulations governing the voluntary grading and certification relating to meats, prepared meats, meat products, shell eggs, poultry products, and rabbit products. Amendments include changing terminology to scheduled and non-scheduled, billing of holidays, billing excessive hours over and above agreement hours, and removing the administrative volume charge. Amendments will standardize and align billing practices for services provided by the Livestock and Poultry Program.

DATES: This rule is effective October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Julie Hartley, Chief, Business Operations Branch, Quality Assessment Division; Livestock and Poultry Program, Agricultural Marketing Service, U.S. Department of Agriculture; Room 3932–S, STOP 0258, 1400 Independence Avenue SW, Washington, DC 20250–0258; telephone (202) 720–7316; or email to *Julie.Hartley@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13771

This action does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule would not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has considered the economic effect of this action on small entities and has determined that it will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

AMS has determined that this rule will not have a significant impact on a substantial number of small entities, as defined by RFA, because the services are voluntary and provided on a fee-for-service basis and are not subject to scalability based on the business size.

Approximately 728 applicants subscribe to AMS's voluntary, fee-for-service activities that are subject to these regulations. The U.S. Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS) identifies small business size by average annual receipts or by the average number of employees at a firm. This information can be found in the Code of Federal Regulations (CFR) at 13 CFR 121.104, 121.106, and 121.201.

AMS requires that all applicants for service provide information about their company for the purpose of processing bills. Information collected from an applicant includes company name, address, billing address, and similar information. AMS started collecting information about the size of the business in May 2017, but it received

the majority of applications prior to May 2017. However, based on working knowledge of these operations, AMS estimates that roughly 25 percent of current applicants may be classified as small entities because they meet the small business requirements of having average annual receipts of $750,000 for beef and poultry producers and $15,000,000 for chicken egg producers as set forth in 13 CFR part 121's Small Business Size Standards by NAICS Industry table (sectors 31–33, subsector 311—food manufacturing). The effects of this rule are not expected to be disproportionately greater or lesser for small applicants than for larger applicants. As described above, these are voluntary, fee-for-service activities.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

Congressional Review Act

Pursuant to the Congressional Review Act [5 U.S.C. 801 *et seq.*], the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This action has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. The Act prohibits states or political subdivisions of a state to impose any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This action will not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this action will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This action has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt state law only when the statute contains an express preemption provision. There are no federalism implications associated with this action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this action will not change the information collection and recordkeeping requirements previously approved and will not impose additional reporting or recordkeeping burdens on users of these voluntary services.

The information collection and recordkeeping requirements of these parts have been approved by OMB under 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0581–0128.

In September 2014, three separate OMB collections—OMB 0581–0127, OMB 0581–0124, and OMB 0581–0128—were merged, such that the current OMB 0581–0128 pertains to Regulations for Voluntary Grading, Certification, and Standards and includes 7 CFR parts 54, 56, and 70.

Background and Revisions

The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), hereinafter referred to as the ''Act,'' directs and authorizes the Secretary of Agriculture to facilitate the competitive and efficient marketing of agricultural products. AMS programs support a strategic marketing perspective that adapts product and marketing decisions to consumer demands, ensures quality, promotes a competitive and efficient domestic and international marketplace, and incorporates new technology. These services include AMS's grading program, which verifies that product meets USDA grade standards. At the request of the buyer or seller, products are officially graded by USDA allowing product application of the grademark or USDA shield. The grademark or USDA shield indicates that USDA has officially graded the product and it has met all the requirements of the designated quality standard. In addition, AMS provides direct certification of products, that meet end-user specifications, in the facilities that manufacture them. Specifications can be for commodities purchased by USDA for nutrition assistance programs, or to a third-party requirement. Product characteristics such as manner of cut, color, and other attributes can be directly examined by an AMS employee to determine if a specification has been met, and the product can be stamped and marketed as ''USDA Certified'' or ''USDA Accepted as Specified.'' This service ensures purchasers receive products that comply with their unique specification requirements. Grading and certification services are voluntary, with users paying for the cost of the requested service.

In 2013, AMS merged the Livestock and Seed Program and Poultry Programs to create the Livestock, Poultry, and Seed (LPS) Program. Prior to the merger, both Programs administered parallel grading and certification services to their respective industries with services provided on a fee-for-service bases. Following the merger, the LPS Program created the Quality Assessment Division (QAD) to oversee grading and certification services carried out by the Grading and Verification Division of the former Livestock and Seed Program and the Grading Branch of the former Poultry Programs. The QAD continues to bill customers with the billing rules specified in the regulations governing the grading of various commodities: 7 CFR part 54—Meats, Prepared Meats and Meat Products (Grading, Certification, and Standards); 7 CFR part 56—Voluntary Grading of Shell Eggs; and 7 CFR part 70—Voluntary Grading of Poultry Products and Rabbit Products.

To improve efficiency and reduce costs, QAD graders are cross-utilized between the commodities. Cross-utilization continues to increase as more customers request services for more than one commodity. Billing according to two sets of rules (one set of rules for part 54 and one set of rules for parts 56 and 70) is inefficient and causes customer confusion. These amendments will standardize the billing rules, remove customer confusion, and increase efficiency in billing administration allowing QAD to bill a customer for multiple services and products with one set of rules.

Standardize Language

Amendments will standardize language for providing service under an

agreement or on an as-needed basis. Services provided under part 54 currently use the terms ''commitment'' for services provided under an agreement and ''non-commitment'' for services provided on an as-needed basis. Services provided under parts 56 and 70 previously used the terms ''resident'' for services provided under an agreement and ''non-resident'' for services provided on an as-needed basis. Amended language for all parts will be ''scheduled'' for services provided under an agreement and ''unscheduled'' for services provided on an as-needed basis.

AMS will amend §§ 56.21 and 70.30 (redesignated § 70.31) to standardize the application for service language with that found in § 54.6. In addition to language currently in § 54.6, AMS published a final rule in the **Federal Register** on September 16, 2019 (84 FR 48551), to amend 7 CFR part 54, AMS–LP–16–0080. The amendments in AMS–LP–16–0080 would add items 5 and 6 to § 54.6(a). AMS will further amend § 54.6(a) by adding a subparagraph after item 6 stating that the applicant agrees to comply with the terms and conditions of the regulations. Standardized language includes the application requirements, items that must be included in the application, and the applicant's agreement to comply with the terms and conditions of the regulations.

In addition to amendments in the proposed rule for Amendments to the Regulations Governing Voluntary Grading of Meats, Prepared Meats, Meat Products, Shell Eggs, Poultry Products, and Rabbit Products published in the **Federal Register** (84 FR 10998) on March 25, 2019, item § 54.6(c) *Termination of Service* has been added to the regulatory language. This item was unintentionally omitted in the proposed rule and was previously § 54.6(c)(3), in the final rule published in the **Federal Register** to amend 7 CFR part 54, AMS–LP–16–0080.

AMS will redesignate §§ 70.30 through 70.37 as §§ 70.29 through 70.36, respectively, and add § 70.37 Types of service. The addition of § 70.37 will clarify and align the services AMS provides with § 56.28.

The amendments will revise §§ 54.28, 56.45, and 70.70 by updating the sections with current language and instructions for payment of services.

Billing of Holidays

Amendments will align holiday billing rules for all services with established policies for employee premium pay under authority of 5 U.S.C. chapter 55 and 5 CFR part 550. Amendments will revise §§ 54.1, 56.1, and 70.1 by adding the definition of observed legal holidays. The addition of observed legal holidays will establish the ''in lieu of holiday'' for a holiday that falls on a Saturday or Sunday. Amendments will also charge the holiday rate for hours worked on observed legal holidays.

Previously, services covered under part 54 were billed the holiday rate only on the actual holiday when worked, and if the actual holiday was not worked, no charge was applied. Additionally, holidays that fall on Saturday or Sunday but were observed on a Friday or Monday were billed at the commitment rate, not the holiday rate.

The amendments will revise § 54.27(c) for scheduled and non-scheduled bases to state the holiday hourly rate would be charged for hours worked on observed legal holidays. The impact analysis for services provided under this part would be less than a $50,000 increase in costs to the meat industry.

The following scenarios demonstrate how billing for hours worked on observed legal holidays will change under the amendments:

Scenario #1

A facility has a commitment agreement for 8 hours of service. Service is provided for 4 hours on a Friday, which is the observed legal holiday for an actual holiday that falls on Saturday.

○ *Previously:* The facility is charged the commitment rate for 8 hours on the agreement.

○ *Amended to:* The facility is charged the holiday rate for the 4 hours worked.

Scenario #2

A facility requests 8 hours of service (non-commitment) on a Friday, which is the observed legal holiday for an actual holiday that falls on Saturday.

○ *Previously:* The facility is charged the non-commitment rate for 8 hours.

○ *Amended to:* The facility is charged the non-commitment holiday rate for 8 hours.

Previously, services covered under parts 56 and 70 were billed the regular rate on the holiday even if the holiday was not worked, the holiday rate when service was provided on the grader's scheduled holiday,[1] and the overtime rate when service was provided on a holiday in excess of the hours stated on the agreement.

The amendments revise §§ 56.46, 56.52, 70.71, and 70.77 to state that the holiday hourly rate will be charged for hours worked on observed legal holidays. The impact for services provided under these parts would be minimal and to the benefit of the applicant in most cases. Impact analysis shows an average cost savings of $2,200 annually per applicant.

The following scenarios demonstrate how billing for hours worked on observed legal holidays are changing under the amendments:

Scenario #1

A facility has a resident agreement for providing service Monday–Friday, 8 hours each day. The actual holiday is a Monday and no service provided.

○ *Previously:* The facility is charged the resident regular rate for 8 hours on the agreement.

○ *Amended to:* The facility will not be charged.

Scenario #2

A facility has a resident agreement for providing service Monday–Friday, 8 hours each day. Service is provided on Monday, which is the observed legal holiday for an actual holiday that falls on Sunday.

○ *Previously:* The facility is charged the resident regular rate for 8 hours on the agreement. The facility is charged the holiday rate if the grader claims it is his/her actual or in lieu of holiday worked.

○ *Amended to:* The facility will only be charged the holiday rate.

Scenario #3

A facility has a resident agreement for providing service Monday–Friday, 8 hours each day. Service is provided for 10 hours on Monday, which is the observed legal holiday for an actual holiday that falls on Sunday.

○ *Previously:* The facility is charged the resident regular rate for 8 hours on the agreement. The facility is charged the holiday rate if the grader claims it is his/her actual or in lieu of holiday worked, plus the overtime rate for 2 hours.

○ *Amended to:* The facility will be charged the holiday rate for 10 hours.

AMS will further clarify and align rates charged for services. Amendments update §§ 54.27, 56.46, 56.52, 70.71, and 70.77 and include the specific rates charged to plants for scheduled and unscheduled services.

Billing Excessive Hours Over and Above Agreement Hours

AMS will align billing rates for services provided over and above agreement hours and following a reasonable amount of billed overtime.

[1] If the grader's scheduled day off falls on a legal holiday, the grader's holiday moves to the preceding or following day (thus becoming his or her scheduled holiday).

Previously, services under part 54 were charged the non-commitment rate, while services provided under parts 56 and 70 were charged the resident overtime rate for hours in excess of their agreement. AMS will align all services and use the unscheduled rate (the previous non-commitment or fee rate) when services are provided over and above their agreement and following a reasonable amount of billed overtime. This amendment affects only services provided under parts 56 and 70 and causes a higher rate to be charged to applicants who request additional staffing outside of the scheduled shifts for which AMS agreed to provide service. Impact analysis shows an average cost increase of $3,700 annually for applicants that request additional graders.

The following scenarios demonstrate how billing for additional staffing outside the agreed-upon scheduled shifts will change under the amendments:

Scenario #1

A facility has an agreement for providing service Monday–Friday, 8 hours each day. The facility uses service for 10 hours on Monday, Wednesday, and Friday and requests service to be provided for 6 hours on Saturday.

○ *Previously:* The facility was charged the overtime rate for 12 hours (service provided Monday, Wednesday, and Friday for 2 hours each day above the agreement, plus 6 hours on Saturday).

○ *Amended to:* The facility will be charged the overtime rate for 6 hours (service provided Monday, Wednesday, and Friday for 2 hours each day above the agreement) and the unscheduled rate for 6 hours of service provided on Saturday.

Scenario #2

A facility has an agreement for providing service Monday–Friday, 8 hours each day, 1st shift. The facility requests additional service to be provided for Monday–Friday, 8 hours each day on 2nd shift for 4 weeks.

○ *Previously:* The facility was charged the overtime rate for all additional hours of service provided.

○ *Amended to:* The facility will be charged the unscheduled rate for all hours of service provided on the 2nd shift.

Scenario #3

A facility has an agreement for providing service Monday–Friday, 8 hours each day. Through the holidays, the facility requests an additional grader to provide service for Monday–Friday, 8 hours each day.

○ *Previously:* The facility was charged the overtime rate for all hours of service provided by the additional grader.

○ *Amended to:* The facility will be charged the unscheduled rate for all hours of service provided by the additional grader.

Remove Administrative Volume Charge

Poultry and shell egg services provided under parts 56 and 70 were billed an administrative volume charge in addition to the hourly rates assessed for providing service. This charge was established to cover overhead costs associated with grading and certification services. In 2014, AMS incorporated new formulas for establishing yearly fee rates into all grading regulations; these new formulas do not include the administrative volume charge, nor do they allow for an increase to the administrative rate. The administrative volume charge was last increased in 2009, and it does not adequately cover overhead costs associated with these voluntary services. The amendments will remove the administrative volume charge altogether from §§ 56.52(a)(4) and 70.77(a)(4) and (5) and allow QAD to charge hourly rates that encompass all costs for providing service. This amendment affects only services provided under parts 56 and 70. QAD estimates that plants with a single or double shift scheduled (40 or 80 hours) will see a minor cost savings of $7,500 annually from the removal of the administrative charge and the creation of the new hourly rates, while plants with four shifts scheduled (160 hours) will see an increase of $32,000 annually.

Summary of Comments

A proposed rule to amend the Regulations Governing Voluntary Grading of Meats, Prepared Meats, Meat Products, Shell Eggs, Poultry Products, and Rabbit Products was published in the **Federal Register** (84 FR 10998) on March 25, 2019. Comments on the proposed rule were solicited from interested parties until May 24, 2019. AMS received four comments; two from industry organizations, one from a State Department of Agriculture, and one comment from an individual.

One commenter from an industry organization favored aligning administrative amendments and removing the administrative volume charge, providing this action is completed before the October 1, 2019, fee increase is effective. This industry organization commenter also requested, in the event the agency moves forward, the agency phase in a fee increase and work with state agencies providing service under a cooperative agreement. Two commenters, one from an industry organization and one from a State Department of Agriculture opposed moving forward with this action, citing fees charged by state agencies providing service under a cooperative agreement. Requirements of cooperative agreements are outside the scope of the regulations, though AMS is discussing cooperative agreements with State Departments of Agriculture. A fourth commenter was an individual that raised issues that were outside the scope of the regulation.

After reviewing the comments, AMS has determined that no changes to the proposed language are warranted.

List of Subjects

7 CFR Part 54

Meat, Meat grading, Meat products, Voluntary standards.

7 CFR Part 56

Eggs, Egg products, Shell egg grading, Shell egg inspections, Voluntary standards.

7 CFR Part 70

Poultry, Poultry grading, Poultry products, Rabbit, Rabbit grading, Voluntary standards.

For the reasons set forth in the preamble, 7 CFR parts 54, 56, and 70 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for 7 CFR part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Amend § 54.1 by adding in alphabetical order a definition for ''observed legal holiday'' to read as follows:

§ 54.1 Meaning of words and terms defined.

* * * * *

Observed legal holiday. When a holiday falls on a weekend—Saturday or Sunday—the holiday usually is observed on Monday (if the holiday falls on Sunday) or Friday (if the holiday falls on Saturday).

* * * * *

■ 3. Revise § 54.6 to read as follows:

§ 54.6 How to obtain service.

(a) *Application.* (1) Any person may apply for service with respect to products in which he or she has a financial interest by completing the required application for service. In any case in which the service is intended to be furnished at an establishment not

operated by the applicant, the application must be approved by the operator of such establishment and such approval shall constitute an authorization for any employee of the Department to enter the establishment for the purpose of performing his or her functions under the regulations in this part. The application must include:

(i) Name and address of the establishment at which service is desired;

(ii) Name and mailing address of the applicant;

(iii) Financial interest of the applicant in the products, except where application is made by a representative of a Government agency in the representative's official capacity;

(iv) Signature of the applicant (or the signature and title of the applicant's representative);

(v) Indication of the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity; and

(vi) The legal designation of the applicant's business as a small or large business, as defined by the U.S. Small Business Administration's North American Industry Classification System (NAICS) Codes.

(2) In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit. Any change in such status, at any time while service is being received, shall be promptly reported by the person receiving the service to the grading office designated by the Director or Chief to process such requests.

(b) *Notice of eligibility for service.* The applicant will be notified whether the application is approved or denied.

(c) *Termination of service.* If an applicant who terminates scheduled grading service requests service again within a 2-year period from the date of the initial termination, the applicant will be responsible for all relocation costs associated with the grader assigned to fulfill the new service agreement. If more than one applicant is involved, expenses will be prorated according to each applicant's committed portion of the official grader's services.

■ 4. Amend § 54.27 by revising paragraph (c) to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(c) *Fees for service*—(1) *On a scheduled basis.* Minimum fees for service performed under a scheduled agreement or an agreement by memorandum will be based on 8 hours per day, Monday through Friday, excluding observed Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. The Agency reserves the right to use any grader assigned to the plant under a scheduled agreement to perform service for other applicants and no charge will be assessed to the scheduled applicant for the number of hours charged to the other applicant. Charges to plants are as follows:

(i) The regular hourly rate will be charged for hours worked in accordance with the approved tour of duty on the application for service between the hours of 6 a.m. and 6 p.m.

(ii) The overtime rate will be charged for hours worked in excess of the approved tour of duty on the application for service.

(iii) The holiday hourly rate will be charged for hours worked on observed legal holidays.

(iv) The night differential rate (for regular or overtime hours) will be charged for hours worked between 6 p.m. and 6 a.m.

(v) The Sunday differential rate (for regular or overtime hours) will be charged for hours worked on a Sunday.

(2) *On an unscheduled basis.* Minimum fees for service performed under an unscheduled basis agreement will be based on the time required to render the service, calculated to the nearest 15-minute period, including official grader's travel and certificate, memorandum, and/or report preparation time performed in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. Charges to plants are as follows:

(i) The regular hourly rate will be charged for the first 8 hours worked per grader per day for all days except observed legal holidays.

(ii) The overtime rate will be charged for hours worked in excess of 8 hours per grader per day for all days except observed legal holidays.

(iii) The holiday hourly rate will be charged for hours worked on observed legal holidays.

* * * * *

■ 5. Revise § 54.28 to read as follows:

§ 54.28 Payment of fees and other charges.

Fees and other charges for service must be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service, the applicant will remit by check, electronic funds transfer, draft, or money order made payable to the National Finance Center. Payment for the service must be made in accordance with directions on the billing statement, and such fees and charges must be paid in advance if required by the official grader or other authorized official.

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 6. The authority citation for 7 CFR part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 7. Amend § 56.1 by adding in alphabetical order a definition for ''observed legal holiday'' to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Observed legal holiday. When a holiday falls on a weekend—Saturday or Sunday—the holiday usually is observed on Monday (if the holiday falls on Sunday) or Friday (if the holiday falls on Saturday).

* * * * *

■ 8. Revise § 56.21 to read as follows:

§ 56.21 How application for service may be made; conditions of service.

(a) *Application.* (1) Any person may apply for service with respect to products in which he or she has a financial interest by completing the required application for service. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application must be approved by the operator of such establishment and such approval shall constitute an authorization for any employee of the Department to enter the establishment for the purpose of performing his or her functions under the regulations in this part. The application must include:

(i) Name and address of the establishment at which service is desired;

(ii) Name and mailing address of the applicant;

(iii) Financial interest of the applicant in the products, except where

application is made by a representative of a Government agency in the representative's official capacity;

(iv) Signature of the applicant (or the signature and title of the applicant's representative);

(v) Indication of the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity; and

(vi) The legal designation of the applicant's business as a small or large business, as defined by the U.S. Small Business Administration's North American Industry Classification System (NAICS) Codes.

(2) In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit. Any change in such status, at any time while service is being received, shall be promptly reported by the person receiving the service to the grading office designated by the Director or Chief to process such requests.

(b) *Notice of eligibility for service.* The applicant will be notified whether the application is approved or denied.

■ 9. Revise § 56.28 to read as follows:

§ 56.28 Types of service.

(a) *Noncontinuous grading service.* Service is performed on an unscheduled basis, with no scheduled tour of duty, and when an applicant requests grading of a particular lot of shell eggs. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service may be referred to as unscheduled grading service. Shell eggs graded under unscheduled grading service are not eligible to be identified with the official grademarks shown in § 56.36.

(b) *Continuous grading service on a scheduled basis.* Service on a scheduled basis has a scheduled tour of duty and is performed when an applicant requests that a USDA licensed grader be stationed in the applicant's processing plant and grade shell eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of scheduled service. Minimum fees for service performed under a scheduled agreement will be based on the hours of the regular tour of duty. Shell eggs graded under scheduled grading service are eligible to be identified with the official grademarks shown in § 56.36 only when processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

(c) *Temporary grading service.* Service is performed when an applicant requests an official plant number with service provided on an unscheduled basis. The applicant must meet all facility, operating, and sanitary requirements of continuous service. Charges or fees are based on the time and expenses needed to perform the work. Shell eggs graded under temporary grading service are eligible to be identified with the official grademarks only when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

■ 10. Amend § 56.45 by revising paragraphs (a) and (b) to read as follows:

§ 56.45 Payment of fees and charges.

(a) Fees and charges for any grading service must be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 56.46 through 56.53, inclusive.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, electronic funds transfer, draft, or money order made payable to the National Finance Center. Payment for the service must be made in accordance with directions on the billing statement, and such fees and charges must be paid in advance if required by the official grader or other authorized official.

* * * * *

■ 11. Amend § 56.46 by revising the section heading and paragraphs (a) introductory text and (c) to read as follows:

§ 56.46 Charges for service on an unscheduled basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on an unscheduled basis shall be based on the applicable formulas specified in this section. For each calendar year or crop year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

* * * * *

(c) Fees for unscheduled grading services will be based on the time required to perform the services. The hourly charges shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate. Charges to plants are as follows:

(1) The regular hourly rate shall be charged for the first 8 hours worked per grader per day for all days except observed legal holidays.

(2) The overtime rate shall be charged for hours worked in excess of 8 hours per grader per day for all days except observed legal holidays.

(3) The holiday hourly rate will be charged for hours worked on observed legal holidays.

* * * * *

■ 12. Revise § 56.47 to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The costs of an appeal grading or review of a grader's decision shall be borne by the appellant on an unscheduled basis at rates set forth in § 56.46, plus any travel and additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

■ 13. Amend § 56.52 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 56.52 Charges for services on a scheduled basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a scheduled grading basis, will be determined based on the formulas in this part. The fees to be charged for any appeal grading shall be as provided in § 56.47.

(a) *Charges.* The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the National Finance Center. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills are payable upon receipt.

(1) When a signed application for service has been received, the State supervisor or his designee will complete a plant survey pursuant to § 56.30. The costs for completing the plant survey will be charged to the applicant on an unscheduled basis as described in § 56.46. No charges will be assessed when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the

application is filed, or if service is inactive due to an approved request for removal of a grader or graders(s) for a period of 6 months, the application will be considered terminated. A new application may be filed at any time. In addition, there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) Charges for the cost of each grader assigned to a plant will be calculated as described in § 56.46. Minimum fees for service performed under a scheduled agreement shall be based on the hours of the regular tour of duty. The Agency reserves the right to use any grader assigned to the plant under a scheduled agreement to perform service for other applicants except that no charge will be assessed to the scheduled applicant for the number of hours charged to the other applicant. Charges to plants are as follows:

(i) The regular hourly rate shall be charged for hours worked in accordance with the approved tour of duty on the application for service between the hours of 6 a.m. and 6 p.m.

(ii) The overtime rate shall be charged for hours worked in excess of the approved tour of duty on the application for service.

(iii) The holiday hourly rate will be charged for hours worked on observed legal holidays.

(iv) The night differential rate (for regular or overtime hours) will be charged for hours worked between 6 p.m. and 6 a.m.

(v) The Sunday differential rate (for regular or overtime hours) will be charged for hours worked on a Sunday.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 56.46, plus actual travel expenses incurred by AMS.

(3) A charge at the hourly rates specified in § 56.46, plus actual travel expenses incurred by AMS for intermediate surveys to firms without grading service in effect.

* * * * *

§ 56.54 [Removed and Reserved]

■ 14. Remove and reserve § 56.54.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 15. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 16. Amend § 70.1 by adding in alphabetical order a definition for ''observed legal holiday'' to read as follows:

§ 70.1 Definitions.

* * * * *

Observed legal holiday. When a holiday falls on a weekend—Saturday or Sunday—the holiday usually is observed on Monday (if the holiday falls on Sunday) or Friday (if the holiday falls on Saturday).

* * * * *

§ 70.30 [Redesignated as § 70.29]

■ 17. Redesignate § 70.30 as § 70.29.

§ 70.31 [Redesignated as § 70.30 and Amended]

■ 18. Redesignate § 70.31 as § 70.30 and revise newly redesignated § 70.30 to read as follows:

§ 70.30 How application for service may be made; conditions of service.

(a) *Application.* (1) Any person may apply for service with respect to products in which he or she has a financial interest by completing the required application for service. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application must be approved by the operator of such establishment and such approval constitutes an authorization for any employee of the Department to enter the establishment for the purpose of performing his or her functions under the regulations in this part. The application shall include:

(i) Name and address of the establishment at which service is desired;

(ii) Name and mailing address of the applicant;

(iii) Financial interest of the applicant in the products, except where application is made by a representative of a Government agency in the representative's official capacity;

(iv) Signature of the applicant (or the signature and title of the applicant's representative);

(v) Indication of the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity; and

(vi) The legal designation of the applicant's business as a small or large business, as defined by the U.S. Small Business Administration's North American Industry Classification System (NAICS) Codes.

(2) In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit. Any change in such status, at any time while service is being received, shall be promptly reported by the person receiving the service to the grading office designated by the Director or Chief to process such requests.

(b) *Notice of eligibility for service.* The applicant will be notified whether the application is approved or denied.

§ § 70.32 through 70.37 [Redesignated as §§ 70.31 through 70.36]

■ 19. Redesignate §§ 70.32 through 70.37 as §§ 70.31 through 70.36, respectively.

■ 20. Add new § 70.37 to read as follows:

§ 70.37 Types of Service.

(a) *Noncontinuous grading service.* Service is performed on an unscheduled basis, with no scheduled tour of duty, and when an applicant requests grading of a particular lot of poultry or rabbit product. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service may be referred to as unscheduled grading service. Poultry and rabbit products graded under unscheduled grading service are not eligible to be identified with the official grademarks shown in § 70.51.

(b) *Continuous grading service on a scheduled basis.* Service on a scheduled basis has a scheduled tour of duty and is performed when an applicant requests that a USDA licensed grader be stationed in the applicant's plant or warehouse and grade poultry and rabbit products in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of scheduled service. Minimum fees for service performed under a scheduled agreement shall be based on the hours of the regular tour of duty. Poultry and rabbit products graded under scheduled grading service are eligible to be identified with the official grademarks shown in § 70.51 only when processed and graded under the supervision of a grader.

(c) *Temporary grading service.* Service is performed when an applicant requests an official plant number with service provided on an unscheduled basis. The applicant must meet facility, operating, and sanitary requirements of continuous service. Charges or fees are based on the time and expenses needed

to perform the work. Poultry and rabbit products graded under temporary grading service are eligible to be identified with the official grademarks only when they are processed and graded under the supervision of a grader.

■ 21. Amend § 70.70 by revising paragraphs (a) and (b) to read as follows:

§ 70.70 Payment of fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 70.71 through 70.78, inclusive.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, electronic funds transfer, draft, or money order made payable to the National Finance Center. Payment for the service must be made in accordance with directions on the billing statement, and such fees and charges must be paid in advance if required by the official grader or other authorized official.

* * * * *

■ 22. Amend § 70.71 by revising the section heading, introductory text, and paragraph (c) to read as follows:

§ 70.71 Charges for services on an unscheduled basis.

Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on an unscheduled basis shall be based on the applicable formulas specified in this section.

* * * * *

(c) Fees for unscheduled grading services will be based on the time required to perform the services. The hourly charges will include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate. Charges to plants are as follows:

(1) The regular hourly rate will be charged for the first 8 hours worked per grader per day for all days except observed legal holidays.

(2) The overtime rate will be charged for hours worked in excess of 8 hours per grader per day for all days except observed legal holidays.

(3) The holiday hourly rate will be charged for hours worked on observed legal holidays.

* * * * *

■ 23. Revise § 70.72 to read as follows:

§ 70.72 Fees for appeal grading or review of a grader's decision.

The costs of an appeal grading or review of a grader's decision, shall be borne by the appellant on an unscheduled basis at rates set forth in § 70.71, plus any travel and additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

§ 70.76 [Removed and Reserved]

■ 24. Remove and reserve § 70.76.

■ 25. Amend § 70.77 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 70.77 Charges for services on a scheduled basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a scheduled grading basis, will be determined based on the formulas in this part. The fees to be charged for any appeal grading will be as provided in § 70.71.

(a) *Charges.* The charges for the grading of poultry and rabbits and edible products thereof must be paid by the applicant for the service and will include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the National Finance Center. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills are payable upon receipt.

(1) When a signed application for service has been received, the State supervisor or his designee will complete a plant survey pursuant to § 70.34. The costs for completing the plant survey will be borne by the applicant on an unscheduled basis as described in § 70.71. No charges will be assessed when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader or graders for a period of 6 months, the application will be considered terminated. A new application may be filed at any time. In addition, there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) Charges for the cost of each grader assigned to a plant will be calculated as described in § 70.71. Minimum fees for service performed under a scheduled agreement will be based on the hours of the regular tour of duty. The Agency reserves the right to use any grader assigned to the plant under a scheduled agreement to perform service for other applicants and no charge will be assessed to the scheduled applicant for the number of hours charged to the other applicant. Charges to plants are as follows:

(i) The regular hourly rate will be charged for hours worked in accordance with the approved tour of duty on the application for service between the hours of 6 a.m. and 6 p.m.

(ii) The overtime rate will be charged for hours worked in excess of the approved tour of duty on the application for service.

(iii) The holiday hourly rate will be charged for hours worked on observed legal holidays.

(iv) The night differential rate (for regular or overtime hours) will be charged for hours worked between 6 p.m. and 6 a.m.

(v) The Sunday differential rate (for regular or overtime hours) will be charged for hours worked on a Sunday.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 70.71 plus actual travel expenses incurred by AMS.

(3) A charge at the hourly rates specified in § 70.71, plus actual travel expenses incurred by AMS for intermediate surveys to firms without grading service in effect.

* * * * *

Dated: September 12, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–20123 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1970

[RUS–18–Agency–0005, RBS–18–None–0029, RHS–18–None–0026]

RIN 0572–AC44

Rural Development Environmental Regulation for Rural Infrastructure

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA) Rural Development (RD), comprised of the Rural Business-Cooperative Service

(RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS), hereafter referred to as the Agency, is issuing a final rule to update the Agency's Environmental Policies and Procedures regulation (7 CFR 1970) to allow the Agency Administrators limited flexibility to obligate federal funds for infrastructure projects prior to completion of the environmental review while ensuring full compliance with National Environmental Policy Act (NEPA) procedures, prior to project construction and disbursement of any RD funding. This change will allow RD to more fully meet the Administration's goals to speed the initiation of infrastructure projects and encourage planned community economic development without additional cost to taxpayers or change to environmental review requirements.

DATES: Effective September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Edna Primrose, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, USDA Rural Development, 1400 Independence Ave. SW, Washington, DC 20250–1570, Telephone (202) 720–0986, Email address: *Edna.Primrose@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

This final rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review and therefore has not been reviewed by the Office of Management and Budget (OMB).

Congressional Rulemaking Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12372, Intergovernmental Review of Federal Programs

The Programs listed in the Catalog of Federal Domestic Assistance under the following numbers are subject to the provisions of Executive Order 12372 which requires Intergovernmental Consultation with state and local officials:

10.760—Water & Waste Disposal System Systems for Rural Communities.
10.763—Emergency Community Water Assistance Grants.
10.766—Community Facilities Loans.
10.770—Water & Waste Disposal Loan and Grants (Section 306C).
10.855—Distance Learning & Telemedicine Grants and Grants.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Sec 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Certification

The Agency has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), given that the amendment is only an administrative, procedural change on the government's part with respect to obligation of funds.

National Environmental Policy Act

In this final rule, the Agency proposes to create limited flexibility for the timing of obligation of funds relative to the completion of environmental review. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbers assigned to the RD Programs affected by this rulemaking are as follows:

10.760—Water & Waste Disposal System Systems for Rural Communities.
10.761—Technical Assistance and Training Grants.
10.762—Solid Waste Management Grants.
10.763—Emergency Community Water Assistance Grants.
10.770—Water & Waste Disposal Loan and Grants (Section 306C).
10.766—Community Facilities Loans and Grants.
10.850—Rural Electrification Loans and Loan Guarantees.
10.851—Rural Telephone Loans and Loan Guarantees.
10.855—Distance Learning & Telemedicine Grants.
10.857—State Bulk Fuel Revolving Loan Fund.
10.858—Assistance to High Energy Cost-Rural Communities.
10.863—Community Connect Grants.
10.865—Biorefinery, Renewable Chemical, & Biobased Product Manufacturing Assistance Program.
10.866—Repowering Assistance Program.
10.867—Advanced Biofuel Payment Program.
10.868—Rural Energy for America Program.
10.886—Rural Broadband Access Loan and Loan Guarantee Program.
10.752—ReConnect Program.

All active CFDA programs and the CFDA Catalog can be found at the following website: *https://beta.sam.gov/* . The website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *http://bookstore.gpo.gov.* Rural Development infrastructure programs not listed in this section nor on the CFDA website, but which are enacted pursuant to the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* the Consolidated Farm and Rural Development Act of 1972, 7 U.S.C. 1921 *et seq.,* or any other Congressional act for Rural Development, will be covered by the requirements of this action when enacted.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory

provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Information Collection and Recordkeeping Requirements

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0127 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

The United States Department of Agriculture (USDA) Rural Development (RD) programs provide loans, grants and loan guarantees to support investment in rural infrastructure to spur rural economic development, create jobs, improve the quality of life, and address the health and safety needs of rural residents. Infrastructure investment is an important national policy priority. As directed by E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, in 2017, USDA as a member of the Federal Permitting Improvement Steering Council has reviewed its NEPA implementing regulations and policies to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects. This final rule is part of that effort to improve the efficiency and effectiveness of RD's environmental reviews and authorizations for infrastructure projects in rural America. On April 25, 2017, the President created the Interagency Task Force on Agriculture and Rural Prosperity (Task Force) through E.O. 13790 and appointed the Secretary of Agriculture as the Task Force's Chair. Among the purposes and functions of the Task Force was to, ''. . . identify legislative, regulatory, and policy changes to promote in rural America agriculture, economic development, job growth, infrastructure improvements, technological innovation, energy security, and quality of life, including changes that remove barriers to economic prosperity and quality of life in rural America.'' The Task Force Report issued on October 21, 2017, included calls to action on achieving e-Connectivity for Rural America, improving rural quality of life, harnessing technological innovation and developing the rural economy.

On November 28, 2018 the Agency concurrently published a proposed and final rule as a direct final rule without prior proposal because the Agency viewed this change as a non-controversial action and anticipated no adverse comments. The purpose of the proposed and direct final rule was to update the Agency's Environmental Policies and Procedures regulation (7 CFR 1970) to allow the Agency Administrators limited flexibility to obligate federal funds for infrastructure projects prior to completion of the environmental review while ensuring full compliance with National Environmental Policy Act (NEPA) procedures prior to project construction and disbursement of any RD funding. The public comment period for the rule change ended on December 24, 2018. The rule was to be effective January 7, 2019, without further action, unless the Agency received significant adverse comments or, an intent to submit a significant adverse comment, by December 24, 2018. The Agency proposed to publish a a timely **Federal Register** document withdrawing the rule if significant adverse comments were received.

Due to the lapse in funding that occurred from December 23, 2018 through January 25, 2019, the Agency was unable to publish a **Federal Register** notice withdrawing the rule by January 7, 2019. However, the Agency has not placed the rule into effect, nor taken any final actions with respect to the rule and is responding to public comments in this final rule. The Agency received four (4) comments in support of the rule from Daniel Spatz, Dave Anderson, Bly Community Action Team, and National Rural Electric Cooperative Association. The Agency also received a total of six letters with adverse comments from the following fifteen (15) organizations and three (3) individuals: Robert Ukeiley, Dinah Bear, Patricia Gerrodette, Center for Biological Diversity (2 separate commenters), Earth Justice, Environmental Law and Policy Center, Environmental Information Protection Center, Grand Canyon Trust, House/Citizens for Environmental Justice, International Fund for Animal Welfare, Klamath Forest Alliance, Natural Resources Defense Council (2 separate commenters), San Juan Citizens Alliance, Save EPA, Sierra Club, Southern Environmental Law Center, Western Environmental Law Center, Western Watersheds.

Purpose of the Regulatory Action

This rulemaking fulfills the mandate of E.O. 13807 as well as the goals of the President's Interagency Task Force on Agriculture and Rural Prosperity by identifying regulatory changes that promote economic development and improve the quality of life in rural America. The RD infrastructure projects impacted by this rule are often critical to the health and safety and quality of life in rural communities. In some cases, funding decisions made by Rural Development are the first step upon which a much larger process of community economic development depends. This amendment to existing regulation will allow the Agency to obligate funding conditioned upon the full and satisfactory completion of environmental review for infrastructure projects. This change will give applicants, and often the distressed communities they represent, some comfort to proceed with an economic development strategy, including the planning process associated with NEPA, without fear that funds may be rescinded before the NEPA process is completed. With this change in place, RD can more fully meet the government's goals of speeding up the initiation of infrastructure projects, encouraging planned community economic development, and leveraging investment without additional cost to taxpayers or any change in environmental review requirements. Infrastructure projects covered by this final rule include those, such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment.

Changes to the Current Regulation.

This final rule adopts the changes to 7 CFR 1970 from the proposed and direct final rules concurrently published in the **Federal Register** on November 23, 2018. It revises 7 CFR 1970.11(b) to change the point at which the environmental review must be completed prior to obligation in all cases. The rule change requires the environmental review process to be completed prior to obligation except in cases where the Administrator deems it necessary to allow for the environmental review to occur after obligation, contingent upon the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives. In instances where the environmental review is not completed by the end of the fiscal year after the funds were obligated or when findings of the environmental review do not support the decision to proceed with a proposed action, the Agency will rescind funds and reverse the decision to proceed. Nothing in this final rule

reduces RD's obligation to complete the NEPA planning process prior to foreclosing reasonable alternatives to the federal action.

Comments

Issue 1: Two individuals and two organizations expressed support for the proposed rule citing that the ability to obligate funds prior to completion of the NEPA process will allow borrowers to more easily secure financing for projects. They also commented that the rule change to expedite the timeframe for completing the NEPA process will provide an ability to more quickly initiate projects.

RUS Response: The Agency agrees that allowing obligation of funds prior to completion of the NEPA process will allow greater certainty for borrowers in securing funding for the projects. In reviewing the final regulation, to ensure conformity with NEPA regulations, the Agency wants to be clear what it means by providing ''certainty'' or ''comfort'' to a loan applicant. Due to the Departmental financial processes, even funds that are ''available until expended'' are swept at the end of the fiscal year and sometimes not returned to the programs for use for several months. That situation creates a period of time where projects cannot move forward even if the environmental review is completed because funds are not available to be obligated to a project. What the Agency means by ''comfort'' is that the funds will be available for the project once the environmental review is completed. The purpose of the change is not to extend the NEPA time frame but to allow obligation prior to completing all requirements of NEPA.

Issue 2: Three individuals and fifteen organizations commented that the application of the direct to final rule in this instance is inconsistent with the Administrative Procedures Act because the changes to the regulations are major and substantive.

RUS Response: This rule was published concurrently with Proposed Rule 83 FR 59318 (November 23, 2018). Because adverse comments were received on the rule, RD did not allow the final rule with comment to go into effect. It has, instead, considered all comments received during the comment period and is addressing these in this notice in accordance with the Administrative Procedures Act. Unfortunately, due to the lapse in government funding in January 2019, the Agency was unable to notify the public that the final rule did not go into effect.

Issue 3: Two individuals and fifteen organizations commented that the Agency did not provide support and documentation to its decision to allow completion of environmental reviews after the decision to obligate funds to a project, and that the preamble of the proposed rule is notably silent on examples of how the process that has existed since 1970 is problematic for either applicants or agencies. They state that there is no record showing the problem this rule is trying to address and no data or record of the scope of the issue.

RUS Response: The Agency has been hearing about the effect of the timing of NEPA reviews and the inability of potential applicants to secure additional financing for a very long time. Despite this public perception, the agency has no data to support this contention. To the contrary, the agency has no evidence that its environmental reviews impede projects or the attainment of outside funding. Because the agency believes there were needed rural development projects that were never submitted for application because of the perceived delay in processing, the agency has undertaken to change the rule. As stated in the final rule with comment, and the proposed rule, the agency is attempting to give applicants ''comfort'' with the extended timing. It does not anticipate environmental reviews to change in any manner. In reviewing the final regulation, to ensure conformity with NEPA regulations, the Agency wants to be clear what it means by providing ''certainty'' or ''comfort'' to a loan applicant. Due to the Departmental financial processes, even funds that are ''available until expended'' are swept at the end of the fiscal year and sometimes not returned to the programs for use for several months. That situation creates a period of time where projects cannot move forward even if the environmental review is completed because funds are not available to be obligated to a project. What the Agency means by ''comfort'' is that the funds will be available for the project once the environmental review is completed. The purpose of the change is not to extend the NEPA time frame but to allow obligation prior to completing all requirements of NEPA. The agency notes that four individuals responded to the proposed rule supporting the change on this basis.

Issue 4: Fifteen organizations commented that allowing an agency to proceed with a decision prior to completing the required environmental review under NEPA disregards the agency's responsibility to inform the public and meaningfully consider public comments prior to decisions. They contend that deferring public input to a late, post-decisional stage of the decision-making process undermines the meaningfulness of public input and, as a result, will have a chilling effect on the willingness of the public to weigh in on decisions impacting their communities.

RUS Response: The Agency will continue to provide the same opportunity for public notice and comment and anticipates that the public input on proposed projects will not be significantly altered, if at all. Over 93 percent of all required reviews are already performed within 10 days. As stated above, public perception of this process and the actual time for reviews are not in sync. As a result, the Agency does not believe that the public's input into agency decision-making will be impacted.

Issue 5: Three individuals and fifteen organizations stated that the Agency's plan to allow post-decisional completion of the environmental review does not fulfill its responsibility to incorporate environmental impacts into the decision-making process. Because, they argue, evaluation of alternatives would take place after the decision to proceed, the proposal would prejudice the selection of the reasonable alternatives. CEQ's regulations explicitly state that agencies shall not commit resources prejudicing selection of alternatives. The NEPA statute does not permit an agency to act first and comply later, nor does it permit an agency to condition performance of its obligation of a showing of irreparable harm. Furthermore, the courts have held that ''it is far easier to influence an initial choice that to change a mind already made up.'' One commenter noted that the proposed rule would up-end guidance issued in 2017 and revised in 2018 that instructs RD agencies that environmental review must be completed and issued prior to agency issuance of any conditional commitment.

RUS Response: The Agency believes that completing the NEPA process post-obligation will continue to allow consideration of alternatives because it will rescind funds should the outcome of the NEPA process require any significant changes to the project. As a result, the public will have the same due consideration and public notice and comment requirements will not change.

Issue 6: One organization stated that the proposed rule conflicts with Council on Environmental Quality (CEQ) regulations of 40 CFR 1500 which require that environmental analysis be completed at the earliest possible time. Section 1501.2 of the CEQ regulations, is aptly named ''Apply NEPA early in the process.'' This section provides that

agencies shall integrate the NEPA process ''at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.''

RUS Response: The Agency believes that the proposed timing of the environmental process is still early enough in the planning stage to ensure decisions will reflect environmental values. Furthermore, the Agency believe that this process will result in fewer project delays, and will in fact, expedite the review process.

Issue 7: Three individuals and fifteen organizations commented that allowing rescission of funds if the results of an environmental review do not ultimately support to the Agency's decision to obligate, does not undo the harm, error, or fatal bias that has already been introduced and tainted the process. Allowing agencies to reconsider and rescind a decision to obligate funds after review in no way corrects otherwise clearly unlawful application of NEPA. They argue that this approach would also leave the responsible agency official in the position of either taking away funding from an outside entity or pressuring the environmental review staff to expedite the process. The most likely, they argue, is shortchanging the environmental review process. The public commenting on such reviews will understand the initial decision has already been made, that bias has irrevocably attached, and that they are essentially asking the agency to ''re-decide'' the decision to obligate funds. Making a commitment prematurely may also cause harm to the applicant because the commitment may not be met, pending the outcome of the NEPA process.

RUS Response: The Agency believes that it will continue to make unbiased decisions on its environmental reviews, and that since 93 percent of reviews are finished before 10 days, the agency's decision-making process will not be influenced.

Issue 8: Fifteen organizations commented that the arbitrary time limit for completion of the environmental review prior to the end of following fiscal year after obligation, conflicts with CEQ regulations that state that prescribed universal time limit for entire NEPA process is too inflexible and should be appropriate to individual actions. Therefore, they argue, the proposed time limits would result in rushed reviews to avoid rescinding funds.

RUS Response: The Agency does not believe that the completion deadline for the environmental review is arbitrary. As mentioned earlier, it was selected as a time that would give applicants confidence in going forward with projects. In addition, the agency would not rush reviews to avoid rescinding, as its current rate of processing is already extremely efficient. Those projects that would require more time, are already the result of reviews outside of the Agency.

List of Subjects in 7 CFR Part 1970

Administrative practice and procedure, Buildings and facilities, Environmental impact statements, Environmental Protection, Grant programs, Housing, Loan programs, Natural resources, Utilities.

Accordingly, for reasons set forth in the preamble, part 1970, title 7, Code of Federal Regulations is amended as follows:

PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 1970 continues to read as follows:

Authority: 7 U.S.C. 6941 *et seq.,* 42 U.S.C. 4241 *et seq.;* 40 CFR parts 1500–1508; 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

■ 2. In § 1970.11, revise paragraph (b) to read as follow:

§ 1970.11 Timing of the environmental review process.

* * * * *

(b) The environmental review process must be concluded before the obligation of funds; except for infrastructure projects where the assurance that funds will be available for community health, safety, or economic development has been determined as necessary by the Agency Administrator. At the discretion of the Agency Administrator, funds may be obligated contingent upon the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives. Funds so obligated shall be rescinded if the Agency cannot conclude the environmental review process before the end of the fiscal year after the year in which the funds were obligated, or if the Agency determines that it cannot proceed with approval based on findings in the environmental review process. For the purposes of this section, infrastructure projects shall include projects such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment, but not investments authorized in the Housing Act of 1949.

* * * * *

Dated: September 16, 2019.

Misty Giles,

Chief of Staff, Rural Development.

Bill Northey,

Under Secretary, Farm Production and Conservation.

[FR Doc. 2019–20342 Filed 9–20–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2019–0745; Special Conditions No. 23–297–SC]

Special Conditions: Diamond Aircraft Industries of Canada Model DA–62 Airplanes; Electronic Engine Control System Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Diamond Aircraft Industries of Canada (DAI Canada) Model DA–62 airplane. This airplane will have a novel or unusual design feature associated with installation of an engine that includes an electronic engine control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 23, 2019. The FAA must receive your comments by October 23, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0745 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building,

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, AIR–691, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined, in accordance with 5 U.S. Code 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because substantially identical special conditions have been subject to the public comment process in several prior instances such that the FAA is satisfied that new comments are unlikely. For the same reason, the FAA finds that good cause exists for making these special conditions effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Special conditions No.	Company/airplane model
23–253–SC [1]	Diamond Aircraft Industries/ Model DA–40NG.
23–267–SC [2]	Cirrus Design Corporation/ Model SF50.
23–282–SC [3]	Pilatus Aircraft Ltd./Model PC–24.
23–292–SC [4]	Costruzioni Aeronautiche Tecnam S.P.A./Model P2012.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change these special conditions based on the comments received.

Background

On November 16, 2018, DAI Canada applied for FAA validation for a type certificate for its new Model DA–62, which includes installation of an electronic engine control (EEC) system—commonly referred to as a full authority digital engine control (FADEC). The Model DA–62 is a normal category, composite, cantilevered low-wing monoplane that seats six passengers and one pilot. Two Austro Engine GmbH Model E4P diesel engines each drive an MT 3 bladed propeller. The airplane has retractable tricycle landing gear, a Garmin G1000NXi avionics suite, and a maximum takeoff weight of 4,407 pounds.

The FAA type certificated Austro Engine GmbH Model E4P aircraft diesel engines (TC No. E00081EN) installed on the Model DA–62 use an EEC system instead of a traditional mechanical control system. Although the EEC is certificated with the engine, the installation of an EEC requires evaluation due to critical environmental effects and possible effects on or by other airplane systems such as indirect effects of lightning, radio interference with other airplane electronic systems, and shared engine, airplane data, and power sources.

Sections 23.1306, 23.1308, and 23.1309 contain requirements for evaluating the installation of complex systems, including electronic systems and critical environmental effects. However, the use of EECs for engines was not envisioned when § 23.1309 was published. The integral nature of these systems makes it necessary to ensure proper evaluation of the airplane functions, which may be included in the EEC, and that the installation does not degrade the EEC reliability approved under part 33 during engine type certification. Sections 23.1306(a) and 23.1308(a) apply to the EEC to ensure it remains equivalent to a mechanical only system, which is not generally susceptible to the High Intensity Radiated Fields (HIRF) and lightning environments.

In some cases, the airplane in which the engine is installed determines a higher classification than the engine controls are certificated for, requiring the EEC systems be analyzed at a higher classification. Since November 2005, EEC special conditions have mandated the § 23.1309 classification for loss of EEC control as catastrophic for any airplane. This is not to imply an engine failure is classified as catastrophic, but that the EEC must provide an equivalent reliability to mechanical engine controls. In addition, §§ 23.1141(e) and 25.901(b)(2) provide the fault tolerant design requirements of turbine engine mechanical controls to the EEC and ensure adequate inspection and maintenance intervals for the EEC.

Part 23 did not envision the use of full authority EECs and lacks the specific regulatory requirements necessary to provide an adequate level of safety. Therefore, special conditions are necessary.

Type Certification Basis

Under the provisions of 14 CFR 21.17, DAI Canada must show that the Model DA–62 meets the applicable provisions of 14 CFR part 23, as amended by amendments 23–1 through 23–62 thereto.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the Model DA–62 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/1A102658468C62D386257950004D7183?OpenDocument.*

[2] *https://www.govinfo.gov/app/details/FR-2015-09-23/2015-24156/summary.*

[3] *https://www.govinfo.gov/app/details/FR-2017-07-17/2017-14936.*

[4] *https://www.federalregister.gov/documents/2019/04/26/2019-08476/special-conditions-costruzioni-aeronautiche-tecnam-spa-model-p2012-airplane-electronic-engine.*

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model DA–62 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

The Model DA–62 airplane will incorporate the following novel or unusual design features: The installation of an EEC system, which is the generic family of electrical/electronic engine control systems to include full authority digital engine controls, supervisory controls, and derivatives of these controls.

Discussion

This airplane makes use of an electronic engine control system instead of a traditional mechanical control system, which is a novel design for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Mandating a structured assessment to determine potential installation issues mitigate concerns that the addition of an electronic engine control does not produce a failure condition not previously considered.

Applicability

As discussed above, these special conditions are applicable to the Model DA–62 airplane. Should DAI Canada apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Model DA–62 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702; Pub. L. 113–53, 127 Stat 584 (49 U.S.C. 44704) note.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for DAI Canada Model DA–62 airplanes.

Installation of Electronic Engine Control System

(a) For electronic engine control (EEC) system installations, it must be established that no single failure or malfunction or probable combinations of failures of EEC system components will have an effect on the system, as installed in the airplane, that causes the Loss of Power Control (LOPC) probability of the system to exceed those allowed in part 33 certification.

(b) Electronic engine control system installations must be evaluated for environmental and atmospheric conditions, including lightning and High Intensity Radiated Fields (HIRF). The EEC system lightning and HIRF effects that result in LOPC should be considered catastrophic.

(c) The components of the installation must be constructed, arranged, and installed to ensure their continued safe operation between normal inspections or overhauls.

(d) Functions incorporated into any electronic engine control that make it part of any equipment, systems or installation whose functions are beyond that of basic engine control, and which may also introduce system failures and malfunctions, are not exempt from § 23.1309 and must be shown to meet part 23 levels of safety as derived from § 23.1309. Part 33 certification data, if applicable, may be used to show compliance with any part 23 requirements. If part 33 data is used to substantiate compliance with part 23 requirements, then the part 23 applicant must be able to provide this data for its showing of compliance.

Note: The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as used for a safety assessment process. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or those failure conditions anticipated to occur one or more times during the operational life of each airplane.

Issued in Kansas City, Missouri on September 11, 2019.

James Foltz,

Acting Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–20325 Filed 9–20–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[USCBP–2019–0032; CBP Dec. No. 19–10]

RIN 1515–AE47

Amendment to Statement Processing and Automated Clearinghouse (ACH); Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim final rule; correction.

SUMMARY: This document corrects an interim final rule published on September 5, 2019, in the **Federal Register**, which amended the U.S. Customs and Border Protection (CBP) regulations regarding statement processing and Automated Clearinghouse (ACH) and made certain technical corrections to the CBP regulations. In the September 5, 2019, document, an amendatory instruction cited an incorrect sentence in a paragraph to be amended. This document corrects that error.

DATES: This correction is effective September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Kara Welty, Debt Management Branch, Revenue Division, Office of Finance, 866–530–4172, *collectionscapabilityowners@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2019, CBP and the Department of the Treasury published the ''Amendment to Statement Processing and Automated Clearinghouse (ACH)'' interim final rule in the **Federal Register** (84 FR 46678), which became effective on September 7, 2019. The interim final rule amended

the CBP regulations regarding statement processing and ACH and made certain technical corrections to the CBP regulations. Among the amendments in the interim final rule were instructions that changed the word ''Customs'' to ''CBP'' in 19 CFR 24.25(a), but inadvertently cited the wrong sentence. This document corrects that error.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

§ 24.25 [Amended]

■ 2. In § 24.25, in paragraph (a), eighth sentence, remove the word ''Customs'' and add ''CBP'' in its place.

Dated: September 16, 2019.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2019–20339 Filed 9–20–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9875]

RIN–1545–BO82

Hardship Distributions of Elective Contributions, Qualified Matching Contributions, Qualified Nonelective Contributions, and Earnings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the rules relating to hardship distributions from section 401(k) plans. The final regulations reflect statutory changes affecting section 401(k) plans, including changes made by the Bipartisan Budget Act of 2018. The regulations affect participants in, beneficiaries of, employers maintaining, and administrators of plans that include cash or deferred arrangements or provide for employee or matching contributions.

DATES:

Effective Date: These regulations are effective September 23, 2019.

Applicability Date: For dates of applicability, see § 1.401(k)–1(d)(3)(v).

FOR FURTHER INFORMATION CONTACT: Roger Kuehnle at (202) 317–4148 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1669. The collection of information in these final regulations is in § 1.401(k)–1(d)(3)(iii)(B). The collection of information relates to the certification by participants in section 401(k) plans that they have insufficient cash or other liquid assets reasonably available to cover expenses resulting from a hardship and, thus, will need a distribution from the plan to meet the expenses. The collection of information is required to obtain a benefit.

The likely recordkeepers are individuals.

Estimated total annual reporting burden: 101,250 hours.

Estimated average annual burden per respondent: 45 minutes.

Estimated number of respondents: 135,000.

Estimated frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Background

Section 401(k)

Section 401(k)(1) of the Internal Revenue Code (Code) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA) that is a qualified CODA. Under section 401(k)(2), a CODA (generally, an arrangement providing for an election by an employee between contributions to a plan or payments directly in cash) is a qualified CODA only if it satisfies certain requirements. Section 401(k)(2)(B) provides that contributions made pursuant to a qualified CODA (referred to as ''elective contributions'') may be distributed only on or after the occurrence of certain events, including death, disability, severance from employment, termination of the plan, attainment of age 59½, hardship, or, in the case of a qualified reservist distribution, the date a reservist is called to active duty. Section 401(k)(2)(C) requires that elective contributions be nonforfeitable at all times.

Section 401(k)(3)(A)(ii) requires that elective contributions satisfy the actual deferral percentage (ADP) test set forth in section 401(k)(3). Sections 401(k)(11), 401(k)(12), and 401(k)(13) each provide an alternative method of meeting the ADP test. Under section 401(k)(3)(D), qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs), as described in sections 401(m)(4)(C) and 401(k)(3)(D)(ii)(I), respectively, are permitted to be taken into account under the ADP test. Among other requirements, QNECs and QMACs must satisfy the distribution limitations of section 401(k)(2)(B) and the nonforfeitability requirements of section 401(k)(2)(C). Similarly, employer contributions that are made pursuant to the safe harbor plan designs of section 401(k)(12) or (13) must meet the distribution limitations of section 401(k)(2)(B).

Section 401(m)(2)(A) requires that matching contributions and employee contributions satisfy the actual contribution percentage (ACP) test set forth in section 401(m)(2). Sections 401(m)(10), 401(m)(11), and 401(m)(12) each provide an alternative method of meeting the ACP test with respect to matching contributions. As with contributions made to section 401(k) plans pursuant to safe harbor plan designs, employer contributions made pursuant to the safe harbor plan designs of section 401(m)(11) or (12) must meet the distribution limitations of section 401(k)(2)(B).

Existing Regulations Under Section 401(k)

The Department of the Treasury (Treasury Department) and the IRS issued comprehensive regulations under sections 401(k) and 401(m) on December 29, 2004 (TD 9169, 69 FR 78143). Since that time, the regulations have been updated to reflect certain subsequent changes to the applicable statute (see TD 9237, 71 FR 6, and TD 9324, 72 FR

21103, providing guidance on designated Roth contributions under section 402A; and TD 9447, 74 FR 8200, providing guidance on section 401(k)(13)). Although the regulations have not been updated to reflect other statutory changes, they have been amended to address certain discrete issues unrelated to statutory changes (see TD 9319, 72 FR 16878, relating to the definition of compensation; TD 9641, 78 FR 68735, relating to mid-year amendments to safe harbor plan designs; and TD 9835, 83 FR 34469, relating to whether QNECs and QMACs must be nonforfeitable when contributed to the plan).

Section 1.401(k)–1(d)(3) provides rules for determining whether a distribution is made on account of an employee's hardship. Under those rules, a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need and the amount of the distribution is not in excess of the amount necessary to satisfy that need (plus any amounts necessary to pay any taxes or penalties reasonably anticipated to result from the distribution). These determinations must be made on the basis of all the relevant facts and circumstances and in accordance with nondiscriminatory and objective standards set forth in the plan.

Section 1.401(k)–1(d)(3)(iv)(B) provides that a distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee to the extent the need may be relieved from other resources that are reasonably available to the employee (including assets of the employee's spouse and minor children that are reasonably available to the employee). Under § 1.401(k)–1(d)(3)(iv)(C), in determining whether the need can be relieved from other resources that are reasonably available to an employee, the employer may rely on the employee's representation (unless the employer has actual knowledge to the contrary) that the need cannot reasonably be relieved from resources specified in § 1.401(k)–1(d)(3)(iv)(C).

To simplify administration, the regulations provide certain safe harbors that may be used to determine whether a distribution is made on account of an employee's hardship. Specifically, § 1.401(k)–1(d)(3)(iii)(B) provides a safe harbor under which distributions for six types of expenses are deemed to be made on account of an immediate and heavy financial need. One of the six types is ''expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).''

In addition, § 1.401(k)–1(d)(3)(iv)(E) provides a safe harbor under which a distribution is deemed necessary to satisfy an immediate and heavy financial need. Under that safe harbor, an employee must first obtain all currently available distributions (including distributions of employee stock ownership plan (ESOP) dividends under section 404(k), but not hardship distributions), and nontaxable plan loans from the plan and any other plan maintained by the employer. Under the safe harbor, an employee's ability to make elective contributions and employee contributions to the plan (and any other plan maintained by the employer) must be suspended for at least 6 months after receipt of the hardship distribution. Pursuant to § 1.401(k)–3(c)(6)(v)(B), in the case of a safe harbor plan described in section 401(k)(12) or (13), the suspension period may not exceed 6 months.

Under § 1.401(k)–1(d)(3)(ii), the maximum amount that may be distributed on account of hardship is the total of the employee's elective contributions that have not previously been distributed (plus earnings, QNECs, and QMACs credited before a specified grandfather date that generally is before 1989). Thus, the maximum amount that may be distributed on account of hardship does not include earnings, QNECs, or QMACs that are not grandfathered.

Section 403(b)

Section 403(b)(7)(A)(ii) provides distribution limitations on amounts contributed to a custodial account that is treated as a section 403(b) annuity contract. Section 403(b)(11) provides that contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) (generally referred to in the regulations under section 403(b) as ''section 403(b) elective deferrals'') may be distributed only on or after the occurrence of certain events, one of which is the employee's hardship. Section 403(b)(11) also provides that no income attributable to these contributions may be distributed on account of hardship.

Section 1.403(b)–6 provides rules for applying these distribution limitations. Section 1.403(b)–6(b) applies to distributions of amounts that are neither attributable to section 403(b) elective deferrals nor made from custodial accounts, § 1.403(b)–6(c) applies to distributions from custodial accounts that are not attributable to section 403(b) elective deferrals, and § 1.403(b)–6(d) applies to distributions of amounts attributable to section 403(b) elective deferrals. Section 1.403(b)–6(d)(2) provides that a hardship distribution of section 403(b) elective deferrals is subject to the rules and restrictions set forth in § 1.401(k)–1(d)(3) and is limited to the aggregate dollar amount of a participant's section 403(b) elective deferrals, without earnings thereon.

Statutory Changes Relating to Section 401(k)

Section 41113 of the Bipartisan Budget Act of 2018, Public Law 115–123 (BBA 2018), directs the Secretary of the Treasury to modify § 1.401(k)–1(d)(3)(iv)(E) to (1) delete the 6-month prohibition on contributions following a hardship distribution and (2) make any other modifications necessary to carry out the purposes of section 401(k)(2)(B)(i)(IV). Section 41114 of BBA 2018 modified the hardship distribution rules under section 401(k)(2)(B) by adding section 401(k)(14)(A) to the Code, which states that the maximum amount available for distribution upon hardship includes (1) contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, (2) QNECs, (3) QMACs, and (4) earnings on these contributions. Section 41114 of BBA 2018 also added section 401(k)(14)(B) to the Code, which provides that a distribution is not treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.

Section 11044 of the Tax Cuts and Jobs Act, Public Law 115–97 (TCJA), added section 165(h)(5) to the Code. Section 165(h)(5) provides that, for taxable years 2018 through 2025, the deduction for a personal casualty loss generally is available only to the extent the loss is attributable to a federally declared disaster (as defined in section 165(i)(5)).

Section 826 of the Pension Protection Act of 2006, Public Law 109–280 (PPA '06), directs the Secretary of the Treasury to modify the rules relating to hardship distributions to permit a section 401(k) plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent in determining whether the participant has incurred a hardship. Notice 2007–7, 2007–5 I.R.B. 395, provides guidance for applying this provision.

Section 827(a) of PPA '06 added to the Code section 72(t)(2)(G), which exempts certain distributions from the application of the section 72(t) additional income tax on early distributions. These distributions, made

during the period that a reservist has been called to active duty, are referred to as ''qualified reservist distributions,'' and could include distributions attributable to elective contributions. Section 827(b)(1) of PPA '06 added section 401(k)(2)(B)(i)(V) to the Code, which permits qualified reservist distributions to be made from a section 401(k) plan.[1]

Section 105(b)(1)(A) of the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110–245 (HEART Act), added section 414(u)(12) to the Code. Section 414(u)(12)(B)(ii) provides for a 6-month suspension of elective contributions and employee contributions after certain distributions to individuals performing service in the uniformed services.

On November 14, 2018, the Treasury Department and the IRS published proposed regulations (REG–107813–18) under section 401(k) and (m) in the **Federal Register** (83 FR 56763). No public hearing was requested or held. Seven comments on the proposed regulations were received during the comment period. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

Overview

The final regulations update the section 401(k) and (m) regulations to reflect: (1) The enactment of (a) sections 41113 and 41114 of BBA 2018, (b) sections 826 and 827 of PPA '06, and (c) section 105(b)(1)(A) of the HEART Act; and (2) the application of the hardship distribution rules in light of the modification to the casualty loss deduction rules made by section 11044 of the TCJA. The final regulations are substantially similar to the proposed regulations, and plans that complied with the proposed regulations will satisfy the final regulations.

Deemed Immediate and Heavy Financial Need

The final regulations, like the proposed regulations, modify the safe harbor list of expenses in existing § 1.401(k)–1(d)(3)(iii)(B) for which distributions are deemed to be made on account of an immediate and heavy financial need by: (1) Adding ''primary beneficiary under the plan'' as an individual for whom qualifying medical, educational, and funeral expenses may be incurred; (2) modifying the expense listed in existing § 1.401(k)–1(d)(3)(iii)(B)(*6*) (relating to damage to a principal residence that would qualify for a casualty deduction under section 165) to provide that for this purpose the limitations in section 165(h)(5) (added by section 11044 of the TCJA) do not apply; and (3) adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters.

Several commenters observed that this new safe harbor expense, which is described in the preamble to the proposed regulations as similar to relief provided by the IRS after certain major federally declared disasters, is narrower in certain respects than this past IRS relief and asked for confirmation that the narrowing is intentional. Some commenters also raised the concern that the new safe harbor expense would lead the IRS to discontinue its practice of issuing announcements providing such relief. The effect of the new safe harbor expense differs from the disaster-relief announcements in three main respects.

First, only disaster-related expenses and losses of an employee who lived or worked in the disaster area will qualify for the new safe harbor expense, and not, as under the disaster-relief announcements, expenses and losses of the employee's relatives and dependents. The Treasury Department and IRS have concluded that limiting distributions only to those employees directly affected by a disaster is consistent with the purposes underlying the Code's hardship distribution provisions and better aligns with the relief given to affected individuals under section 7508A for similar disasters.

Second, unlike under the disaster-relief announcements, there is no specific deadline by which a request for a disaster-related hardship distribution must be made and no specific authority to relax certain procedural requirements established by the plan administrator or plan terms (although it is expected that plan administrators will be flexible in interpreting plan terms requiring documentation relating to the hardship when processing hardship distribution requests during the difficult circumstances following a disaster).

Third, unlike under the disaster-relief announcements, there is no extended deadline for plan sponsors to add disaster-related distribution or loan provisions to the plan. In the absence of such an extended deadline, a plan sponsor that does not choose to add disaster-related hardship distribution provisions as part of an amendment reflecting the final regulations but instead chooses to wait until a disaster occurs to add those provisions (or to add a loan provision) would need to adopt a plan amendment by the end of the plan year the amendment is first effective.

Making expenses related to certain disasters a safe harbor expense is intended to eliminate any delay or uncertainty concerning access to plan funds that might otherwise occur following a major disaster. Accordingly, the Treasury Department and IRS expect that no more disaster-relief announcements will be needed. However, the Treasury Department and IRS are considering separate guidance to address delayed amendment deadlines when the new safe harbor expense or loan provisions are added to a plan at a later date in response to a particular disaster.

Distribution Necessary To Satisfy Financial Need

Pursuant to sections 41113 and 41114 of BBA 2018, the final regulations, like the proposed regulations, modify the rules for determining whether a distribution is necessary to satisfy an immediate and heavy financial need by eliminating (1) any requirement that an employee be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution and (2) any requirement to take plan loans prior to obtaining a hardship distribution. In particular, the final regulations, like the proposed regulations, eliminate the safe harbor in existing § 1.401(k)–1(d)(3)(iv)(E), under which a distribution is deemed necessary to satisfy the financial need only if elective contributions and employee contributions are suspended for at least 6 months after a hardship distribution is made and, if available, nontaxable plan loans are taken before the hardship distribution is made.

The proposed regulations eliminate the rules in existing § 1.401(k)–1(d)(3)(iv)(B) (under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances) and provide one general standard for determining whether a distribution is necessary. Under this general standard, a hardship distribution may not exceed the amount of an employee's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), the employee must have obtained other available, non-hardship distributions under the employer's

[1] While section 827(b)(2) and (3) of PPA '06 amended section 403(b)(7)(A)(ii) and (b)(11) to permit qualified reservist distributions to be made from a section 403(b) plan, the regulations under section 403(b) have not yet been updated to reflect these statutory amendments.

plans, and the employee must provide a representation that he or she has insufficient cash or other liquid assets available to satisfy the financial need. A hardship distribution may not be made if the plan administrator has actual knowledge that is contrary to the representation. These modifications are adopted in the final regulations with the changes described later in this preamble relating to employee representations and the type of plans subject to the prohibition on suspensions.

Two commenters asked that ESOP dividends under section 404(k) be excepted from the requirement that an employee must first obtain other currently available distributions under the employer's plans. Alternatively, they asked that plans be permitted to disregard that distribution requirement with respect to those dividends if the dividends are less than a specified dollar amount. The comments appear to reflect a misinterpretation of the breadth of the distribution requirement. Under both the existing regulations and the proposed regulations, the distribution requirement applies only to distributions that are ''currently available,'' which significantly limits the ESOP dividends subject to the rule. Specifically, the only ESOP dividends that must be distributed under this rule are those that, at the time of the employee's hardship withdrawal request, both (1) have been paid to the plan and (2) are available for the employee to elect to receive in cash. Thus, for example, if an ESOP requires a participant to make an irrevocable election whether to receive a dividend by a deadline that is in advance of the dividend payment date, then a participant who does not elect to receive the dividend by that deadline and who later requests a hardship distribution has no dividends currently available. Although in some instances these ESOP dividend amounts may be small and, if distributed, would have a minimal impact on alleviating a hardship, the Treasury Department and IRS have concluded that ESOP dividends should not be treated differently than any other nonhardship distributions that are currently available under the plan. Accordingly, no changes were made in response to these comments.

One commenter was concerned that the requirement for an employee to make a representation regarding the unavailability of cash or other liquid assets to satisfy the financial need would be a problem if the employee has those assets but has another immediate need for them. In response to the comment, the final regulations provide that the employee representation only relates to whether the employee has cash or other liquid assets that are ''reasonably available'' to satisfy the need. Thus, an employee could make a representation that he or she has insufficient cash or other liquid assets reasonably available to satisfy a financial need even if the employee did have cash or other liquid assets on hand, provided those assets were earmarked for payment of an obligation in the near future (for example, rent).

The proposed regulations provide that the employee representation may be made ''in writing, by an electronic medium, or in such other form as may be prescribed by the Commissioner.'' One commenter asked for clarification that a verbal representation via telephone could be used if it is recorded. The final regulations clarify that this method is acceptable, by referencing the definition of ''electronic medium'' at § 1.401(a)–21(e)(3).

Two commenters asked for clarification of the requirement that a plan administrator not have ''actual knowledge'' that is contrary to an employee's representation or, alternatively, they asked that the requirement be eliminated. The requirement does not impose upon plan administrators an obligation to inquire into the financial condition of employees who seek hardship distributions. Rather, the rule is limited to situations in which the plan administrator already possesses sufficiently accurate information to determine the veracity of an employee representation. The Treasury Department and IRS believe the requirement helps ensure the integrity of the procedures used to determine whether a distribution is necessary to satisfy an employee's financial need. Accordingly, the final regulations retain the actual-knowledge requirement.

The final regulations, like the proposed regulations, provide that a plan generally may provide for additional conditions, such as those described in 26 CFR 1.401(k)–1(d)(3)(iv)(B) and (C) (revised as of April 1, 2019), to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. However, like the proposed regulations, the final regulations do not permit a plan to provide for a suspension of elective contributions or employee contributions as a condition of obtaining a hardship distribution. This is responsive to Congress' concern in enacting section 41113 of BBA 2018 that a suspension impedes an employee's ability to replace distributed funds. See the Ways and Means Committee description of section 1503 of H.R. 1,[2] which became section 41113 of BBA 2018.

One commenter asked what conditions, besides those listed in existing § 1.401(k)–1(d)(3)(iv)(B) and (C) (other than a suspension of contributions), could be imposed on a hardship distribution, suggesting that completing a plan's application process and providing required documentation should be permissible conditions. The Treasury Department and IRS agree that these two conditions are permissible. The Treasury Department and IRS also note that plan sponsors have available a broad range of conditions that may be imposed on a hardship distribution; for example, a plan could provide for a nondiscriminatory, minimum dollar amount for a hardship distribution.

Another commenter recommended that the prohibition on suspensions of elective contributions and employee contributions in the proposed regulations be eliminated and plan sponsors be given the flexibility to impose a suspension. However, in light of Congress' expressed concern that a suspension impedes an employee's ability to replace distributed funds, the final regulations retain the prohibition on suspensions.

Another commenter requested guidance on which other plans of the employer, besides the plan making the hardship distribution, are subject to the prohibition on suspensions. Although the existing safe harbor in § 1.401(k)–1(d)(3)(iv)(E)(*2*) imposes a mandatory suspension with respect to all qualified and nonqualified plans maintained by the employer, the proposed regulations do not specify the plans to which the prohibition on suspensions applies. The Treasury Department and IRS have concluded that Congress' concerns underlying section 41113 of BBA 2018 have little relevance to unfunded nonqualified plans. Accordingly, the final regulations provide that the prohibition on suspensions applies only to a qualified plan, a section 403(b) plan, and an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A). Thus, a plan subject to section 409A may retain its suspension provisions (or, to the extent consistent with section 409A and the regulations thereunder, the plan may be amended to remove them).

Another commenter requested guidance on the continuing applicability of revenue rulings that require a ''substantial limitation'' on the right of a participant to withdraw

[2] H.R. Rep. No. 115–409, at 196 (2017).

matched employee contributions, such as a suspension of contributions. See, for example, Rev. Rul. 74–56, 1974–1 C.B. 90. Under the final regulations, if, on or after January 1, 2020, matched employee contributions are distributed in conjunction with a hardship distribution of elective contributions, a suspension of employee contributions is not permitted.[3]

Expanded Sources for Hardship Distributions

Pursuant to section 41114 of BBA 2018, the final regulations, like the proposed regulations, modify existing § 1.401(k)–1(d)(3) to permit hardship distributions from section 401(k) plans of elective contributions, QNECs, QMACs, and earnings on these amounts, regardless of when contributed or earned.

Several commenters asked how the new distribution rules apply to safe harbor contributions made to a plan described in section 401(k)(12). Because safe harbor contributions made to a plan described in section 401(k)(12) are either QNECs or QMACs, amounts attributable to these contributions may be distributed on account of hardship. As noted in the preamble to the proposed regulations, safe harbor contributions made to a plan described in section 401(k)(13) may also be distributed on account of an employee's hardship (because these contributions are subject to the same distribution limitations applicable to QNECs and QMACs). See § 1.401(k)–3(k)(3)(i). However, a plan may limit the type of contributions available for hardship distributions and may exclude earnings on those contributions from hardship distribution eligibility.

Section 403(b) Plans

Section 1.403(b)–6(d)(2) provides that a hardship distribution of section 403(b) elective deferrals is subject to the rules and restrictions set forth in § 1.401(k)–1(d)(3); accordingly, the preamble to the proposed regulations states that the new rules relating to a hardship distribution of elective contributions from a section 401(k) plan generally apply to section 403(b) plans. Two commenters asked whether, in light of historical concerns about employee self-certification in section 403(b) plans, the employee-representation requirement applies to section 403(b) plans. Because this requirement is retained in the final regulations, at § 1.401(k)–1(d)(3)(iii)(B), it applies to section 403(b) plans.

The preamble to the proposed regulations addresses other issues related to hardship distributions under section 403(b) plans, and states that because Code section 403(b)(11) was not amended by section 41114 of BBA 2018, income attributable to section 403(b) elective deferrals continues to be ineligible for distribution on account of hardship. As also stated in that preamble, amounts attributable to QNECs and QMACs may be distributed from a section 403(b) plan on account of hardship only to the extent that, under § 1.403(b)–6(b) and (c), hardship is a permitted distributable event for amounts that are not attributable to section 403(b) elective deferrals. Thus, QNECs and QMACs in a section 403(b) plan that are not in a custodial account may be distributed on account of hardship, but QNECs and QMACs in a section 403(b) plan that are in a custodial account continue to be ineligible for distribution on account of hardship.

Applicability Dates

The changes to the hardship distribution rules made by BBA 2018 are effective for plan years beginning after December 31, 2018. The final regulations provide plan sponsors with a number of applicability-date options. Although presented differently in the proposed regulations, the options available to plan sponsors under the final regulations are the same as those available under the proposed regulations.

In response to a comment on the proposed regulations requesting clarity regarding which rules apply during 2019, the final regulations provide that § 1.401(k)–1(d)(3) applies to distributions made on or after January 1, 2020 (rather than, as in the proposed regulations, to distributions made in plan years beginning after December 31, 2018). However, § 1.401(k)–1(d)(3) may be applied to distributions made in plan years beginning after December 31, 2018, and the prohibition on suspending an employee's elective contributions and employee contributions as a condition of obtaining a hardship distribution may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. Thus, for example, a calendar-year plan that provides for hardship distributions under the pre-2019 safe harbor standards may be amended to provide that an employee who receives a hardship distribution in the second half of the 2018 plan year will be prohibited from making contributions only until January 1, 2019 (or may continue to provide that contributions will be suspended for the originally scheduled 6 months).

If the choice is made to apply § 1.401(k)–1(d)(3) to distributions made before January 1, 2020, the new rules requiring an employee representation and prohibiting a suspension of contributions may be disregarded with respect to those distributions. To the extent early application of § 1.401(k)–1(d)(3) is not chosen, the rules in § 1.401(k)–1(d)(3), prior to amendment by this Treasury decision, apply to distributions made before January 1, 2020, taking into account statutory changes effective before 2020 that are not reflected in that regulation.

In addition, the revised list of safe harbor expenses may be applied to distributions made on or after a date that is as early as January 1, 2018. Thus, for example, a plan that made hardship distributions relating to casualty losses deductible under section 165 without regard to the changes made to section 165 by the TCJA (which, effective in 2018, require that, to be deductible, losses must result from a federally declared disaster) may be amended to apply the revised safe harbor expense relating to casualty losses to distributions made in 2018, so that plan provisions will conform to the plan's operation. Similarly, a plan may be amended to apply the revised safe harbor expense relating to losses (including loss of income) incurred by an employee on account of a disaster that occurred in 2018, provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by the Federal Emergency Management Agency for individual assistance with respect to the disaster.

Plan Amendments

The Treasury Department and IRS expect that plan sponsors will need to amend their plans' hardship distribution provisions to reflect the final regulations, and any such amendment must be effective for distributions beginning no later than January 1, 2020. The deadline for amending a disqualifying provision is set forth in Rev. Proc. 2016–37, 2016–29 I.R.B. 136. For example, with respect to an individually designed plan that is not a governmental plan, the deadline for amending the plan to reflect a change in qualification requirements is the end of the second calendar year that begins after the issuance of the Required Amendments List (RAL) described in

[3] Issues relating to the applicability of prior revenue rulings to distributions of matched employee contributions not made in conjunction with a hardship distribution of elective contributions are beyond the scope of these regulations.

section 9 of Rev. Proc. 2016–37 that includes the change; if the final regulations are included in the 2019 RAL, the deadline will be December 31, 2021.

A plan provision that does not result in the failure of the plan to satisfy the qualification requirements, but is integrally related to a qualification requirement that has been changed in a manner that requires the plan to be amended, may be amended by the same deadline that applies to the required amendment. The Treasury Department and IRS have determined that a plan amendment modifying a plan's hardship distribution provisions that is effective no later than the required amendment, including a plan amendment reflecting one or more of the following, will be treated as amending a provision that is integrally related to a qualification requirement that has been changed: (1) The change to section 165 (relating to casualty losses); (2) the addition of the new safe harbor expense (relating to expenses incurred as a result of certain federally declared disasters); and (3) the extension of the relief under Announcement 2017–15, 2017–47 I.R.B. 534, to victims of Hurricanes Florence and Michael that was provided in the preamble to the proposed regulations. Thus, in the case of an individually designed plan, the deadline for such an integrally related amendment will be the same as the deadline for the required amendment (described in the preceding paragraph), even if some of the amendment provisions have an earlier effective date.

Several commenters requested guidance on amendment deadlines for pre-approved plans. The deadline for adopting a required amendment (as well as any integrally related amendment) to a pre-approved plan is set forth in section 15 of Rev. Proc. 2016–37, and varies depending on several factors, including the type of entity sponsoring the plan and the period used for the plan year. For example, under Rev. Proc. 2016–37, in the case of an employer with a calendar-year tax year that maintains a pre-approved plan with a calendar-year plan year and that chose to apply the new safe harbor expense for certain disasters in 2018, the deadline to adopt such an interim amendment for the new expense would be the tax-filing deadline (plus extensions) for 2018. The Treasury Department and IRS recognize that, for an employer using a pre-approved plan, the interim amendment deadline under Rev. Proc. 2016–37 that applies for an amendment to a plan provision that is integral to the qualification requirement that has been changed may be earlier than the interim amendment deadline for the required amendment. Accordingly, the Treasury Department and IRS are extending the deadline for an interim amendment related to the hardship distribution provisions. Under this extension, for an employer using a pre-approved plan, the interim amendment deadline for the required amendment to the hardship distribution provisions of the plan will also be the deadline for all amendments integrally related to the hardship distribution provisions (rather than the earlier deadline that might otherwise apply under Rev. Proc. 2016–37 to those integrally related amendments). Thus, if the employer in the example in this paragraph were to implement the prohibition on suspensions effective for distributions made on or after January 1, 2020, the interim amendment deadline to add the new safe harbor expense would be the same as the deadline for the required amendment (that is, the tax-filing deadline (plus extensions) for 2020), even if the new safe harbor expense is effective in an earlier year.

Several commenters also requested guidance on the amendment deadlines for pre-approved and individually designed section 403(b) plans. Under Rev. Proc. 2017–18, 2017–5 I.R.B. 743, the remedial amendment deadline for a section 403(b) plan is March 31, 2020. The Treasury Department and IRS are considering providing for a later amendment deadline for the amendments relating to the final regulations in separate guidance.

Other Issues

Several commenters requested that the Internal Revenue Manual (IRM) be updated to reflect the new hardship distribution rules. The IRS intends to update the IRM to reflect the new rules in the final regulations after publication of the final regulations.

Two commenters asked whether a plan must include every one of the seven expenses in the § 1.401(k)–1(d)(3)(ii)(B) list of deemed immediate and heavy financial needs and cover every individual described in the list (for example, a primary beneficiary under the plan, in the case of certain expenses) in order to be considered as using the safe harbor standards for hardship distributions. Under the IRS's pre-approved plan program for qualified plans, certain section 401(k) plans that provide for hardship distributions will not be approved unless the distributions are made under circumstances described in the safe harbor standards in the regulations under section 401(k). For this purpose, a plan making hardship distributions for some but not all the safe harbor expenses, or for expenses of some but not all the categories of individuals described in § 1.401(k)–1(d)(3)(ii)(B), is considered to be using the safe harbor standards for hardship distributions.

One commenter asked whether the proposed regulations' prohibition on suspensions of elective contributions and employee contributions applies to pre-approved section 403(b) plans in light of the fact that the IRS's rules for pre-approved section 403(b) plans require that a participant's elective deferrals be suspended for 6 months following a hardship distribution. The prohibition on suspensions is retained in the final regulations, and the rule applies to section 403(b) plans, including pre-approved section 403(b) plans.

Also, one commenter asked for relief relating to the notice requirements for safe harbor plans described in sections 401(k)(12) and 401(k)(13). Because a description of withdrawal provisions is required to be included in the notice provided to eligible employees (see § 1.401(k)–3(d)(2)(ii)(G)), if a description of the new hardship withdrawal provisions was not already included in a notice, employees must be provided an updated notice reflecting the new hardship withdrawal provisions and must be given a reasonable opportunity to change their cash or deferred election. See section III.C of Notice 2016–16, 2016–7 I.R.B. 318, for the notice-timing and election-opportunity requirements with respect to mid-year amendments to safe harbor plans.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that employers with section 401(k) plans that permit hardship withdrawals must already maintain records relating to an employee's application for a hardship withdrawal, and the incremental cost due to the new certification requirement in final regulations § 1.401(k)–1(d)(3)(iii)(B)(*2*) will be minimal. In addition, some employers, including some small entities, use a hardship withdrawal procedure available under the existing

regulations that requires an employee certification almost identical to that in the final regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

Drafting Information

The principal author of these regulations is Roger Kuehnle of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS and Treasury Department participated in their development.

Statement of Availability of IRS Documents

The IRS notices, revenue procedures and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 401(m)(9) and 26 U.S.C. 7805.

* * * * *

■ **Par. 2.** Section 1.401(k)–0 is amended under the heading § 1.401(k)–1 by revising the entries for (d)(3)(ii) and (d)(3)(ii)(A) and (B), adding an entry for (d)(3)(ii)(C), revising the entries for (d)(3)(iii) and (d)(3)(iii)(A) and (B), adding an entry for (d)(3)(iii)(C), revising the entry for (d)(3)(iv), removing the entries for (d)(3)(iv)(A) through (F), revising the entry for (d)(3)(v), and adding the entries for (d)(3)(v)(A) through (C) to read as follows:

§ 1.401(k)–0 Table of contents.

* * * * *

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(d) * * *

(3) * * *

(ii) Immediate and heavy financial need.

(A) In general.

(B) Deemed immediate and heavy financial need.

(C) Primary beneficiary under the plan.

(iii) Distribution necessary to satisfy financial need.

(A) Distribution may not exceed amount of need.

(B) No alternative means reasonably available.

(C) Additional conditions.

(iv) Commissioner may expand standards.

(v) Applicability date.

(A) General rule.

(B) Options for earlier application.

(C) Certain rules optional in 2019.

* * * * *

■ **Par. 3.** Section 1.401(k)–1 is amended by:

■ 1. Revising paragraphs (d)(1)(ii) and (iii) and adding new paragraph (d)(1)(iv).

■ 2. Removing paragraph (d)(3)(ii) and redesignating paragraphs (d)(3)(iii), (iv), and (v) as paragraphs (d)(3)(ii), (iii), and (iv).

■ 3. Revising newly redesignated paragraph (d)(3)(ii)(B) and adding new paragraph (d)(3)(ii)(C).

■ 4. Revising newly redesignated paragraphs (d)(3)(iii) and (iv) and adding new paragraph (d)(3)(v).

■ 5. In paragraph (d)(6), removing *Examples 3, 4,* and *5,* redesignating *Example 6* as *Example 3,* and designating *Examples 1* through *3* as paragraphs (d)(6)(i) through (iii).

■ 6. In newly designated paragraph (d)(6)(ii), redesignating paragraphs (d)(6)(ii)(i) and (ii) as paragraphs (d)(6)(ii)(A) and (B).

The additions and revisions read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(d) * * *

(1) * * *

(ii) In the case of a profit-sharing, stock bonus or rural cooperative plan—

(A) The employee's attainment of age 59½; or

(B) In accordance with section 401(k)(14), the employee's hardship;

(iii) In accordance with section 401(k)(10), the termination of the plan; or

(iv) In the case of a qualified reservist distribution defined in section 72(t)(2)(G)(iii), the date the reservist was ordered or called to active duty.

* * * * *

(3) * * *

(ii) * * *

(B) *Deemed immediate and heavy financial need.* A distribution is deemed to be made on account of an immediate and heavy financial need of the employee if the distribution is for—

(*1*) Expenses for (or necessary to obtain) medical care that would be deductible under section 213(d), determined without regard to the limitations in section 213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in section 213(a), the recipient is a primary beneficiary under the plan;

(*2*) Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);

(*3*) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the employee, for the employee's spouse, child or dependent (as defined in section 152 without regard to section 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary beneficiary under the plan;

(*4*) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence;

(*5*) Payments for burial or funeral expenses for the employee's deceased parent, spouse, child or dependent (as defined in section 152 without regard to section 152(d)(1)(B)), or for a deceased primary beneficiary under the plan;

(*6*) Expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income); or

(*7*) Expenses and losses (including loss of income) incurred by the employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707, provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

(C) *Primary beneficiary under the plan.* For purposes of paragraph (d)(3)(ii)(B) of this section, a ''primary beneficiary under the plan'' is an individual who is named as a beneficiary under the plan and has an unconditional right, upon the death of the employee, to all or a portion of the

employee's account balance under the plan.

(iii) *Distribution necessary to satisfy financial need*—(A) *Distribution may not exceed amount of need.* A distribution is treated as necessary to satisfy an immediate and heavy financial need of an employee only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(B) *No alternative means reasonably available.* A distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee unless each of the following requirements is satisfied—

(*1*) The employee has obtained all other currently available distributions (including distributions of ESOP dividends under section 404(k), but not hardship distributions) under the plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the employer;

(*2*) The employee has provided to the plan administrator a representation in writing (including by using an electronic medium as defined in § 1.401(a)–21(e)(3)), or in such other form as may be prescribed by the Commissioner, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and

(*3*) The plan administrator does not have actual knowledge that is contrary to the representation.

(C) *Additional conditions.* A plan generally may provide for additional conditions, such as those described in 26 CFR 1.401(k)–1(d)(3)(iv)(B) and (C) (revised as of April 1, 2019), to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. For example, a plan may provide that, before a hardship distribution may be made, an employee must obtain all nontaxable loans (determined at the time a loan is made) available under the plan and all other plans maintained by the employer. However, a plan may not provide for a suspension of an employee's elective contributions or employee contributions under any plan described in section 401(a) or 403(a), any section 403(b) plan, or any eligible governmental plan described in § 1.457–2(f) as a condition of obtaining a hardship distribution.

(iv) *Commissioner may expand standards.* The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), expanding the list of distributions deemed to be made on account of immediate and heavy financial needs and setting forth additional methods to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need.

(v) *Applicability date*—(A) *General rule.* Except as otherwise provided in this paragraph (d)(3)(v), the rules in this paragraph (d)(3) apply to distributions made on or after January 1, 2020. For distributions made before January 1, 2020, the rules in 26 CFR 1.401(k)–1(d)(3) (revised as of April 1, 2019) apply.

(B) *Options for earlier application.* The rules in this paragraph (d)(3) may be applied to distributions made in plan years beginning after December 31, 2018, and the last sentence of paragraph (d)(3)(iii)(C) of this section (prohibiting the suspension of contributions as a condition of obtaining a hardship distribution) may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. Thus, for example, a calendar-year plan that provides for hardship distributions under the rules in 26 CFR 1.401(k)–1(d)(3)(iv)(E) (revised as of April 1, 2019) may be amended to provide that an employee who receives a hardship distribution in the second half of the 2018 plan year will be prohibited from making contributions only until January 1, 2019 (or may continue to provide that contributions will be suspended for the originally scheduled 6 months). In addition, paragraph (d)(3)(ii)(B) of this section (listing distributions deemed to be made on account of an immediate and heavy financial need) may be applied to distributions made on or after a date that is as early as January 1, 2018.

(C) *Certain rules optional in 2019.* If, in accordance with paragraph (d)(3)(v)(B) of this section, the rules in this paragraph (d)(3) are applied to distributions made before January 1, 2020, then the rules in paragraphs (d)(3)(iii)(B)(*2*) and (*3*) of this section (relating to an employee representation) and the last sentence of paragraph (d)(3)(iii)(C) of this section (prohibiting the suspension of contributions as a condition of obtaining a hardship distribution) may be disregarded with respect to such distributions.

* * * * *

■ **Par. 4.** Section 1.401(k)–3 is amended by:

■ 1. Revising paragraph (c)(6)(v).

■ 2. Removing the language '', and, in the case of a hardship distribution, suspends an employee's ability to make elective contributions for 6 months in accordance with § 1.401(k)–1(d)(3)(iv)(E)'' in the fifth sentence in paragraph (c)(7), *Example 1*(i).

■ 3. Removing the second sentence in paragraph (j)(2)(iv).

The revision reads as follows:

§ 1.401(k)–3 Safe harbor requirements.

* * * * *

(c) * * *

(6) * * *

(v) *Restrictions due to limitations under the Internal Revenue Code.* A plan may limit the amount of elective contributions made by an eligible employee under a plan—

(A) Because of the limitations of section 402(g) or 415;

(B) Due to a suspension under section 414(u)(12)(B)(ii); or

(C) Because, on account of a hardship distribution made before January 1, 2020, an employee's ability to make elective contributions has been suspended for 6 months.

* * * * *

§ 1.401(k)–6 [Amended]

■ **Par. 5.** Section 1.401(k)–6 is amended by:

■ 1. Removing the fourth sentence in paragraph (2) of the definition of *Eligible employee.*

■ 2. Removing the language '', except as provided otherwise in § 1.401(k)–1(c) and (d),'' in the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs).*

■ **Par. 6.** Section 1.401(m)–3 is amended by revising paragraph (d)(6)(v) to read as follows:

§ 1.401(m)–3 Safe harbor requirements.

* * * * *

(d) * * *

(6) * * *

(v) *Restrictions due to limitations under the Internal Revenue Code.* A plan may limit the amount of contributions made by an eligible employee under a plan—

(A) Because of the limitations of section 402(g) or section 415;

(B) Due to a suspension under section 414(u)(12)(B)(ii); or

(C) Because, on account of a hardship distribution made before January 1, 2020, an employee's ability to make

contributions has been suspended for 6 months.

* * * * *

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: September 5, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–20511 Filed 9–19–19; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0700; FRL–9999–77–Region 5]

Air Plan Approval; Indiana; Attainment Plan for the Morgan County Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving as a State Implementation Plan (SIP) revision the Morgan County-related elements of an Indiana submission to EPA dated October 2, 2015, as supplemented on November 15, 2017, June 7, 2017, February 8, 2019, and February 12, 2019. EPA concludes that Indiana has appropriately demonstrated that the plan provisions provide for attainment of the 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in the Morgan County area by the applicable attainment date and that the plan meets the other applicable requirements under the Clean Air Act.

DATES: This final rule is effective on October 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0700. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: John Summerhays at EPA Region 5, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Notice of Proposed Rulemaking

Following the promulgation in 2010 of a 1-hour primary SO_2 NAAQS, EPA designated two townships in Morgan County, Indiana as nonattainment for this NAAQS, in conjunction with designating three other areas in Indiana and multiple areas in other states as nonattainment as well. On October 2, 2015, Indiana submitted plans addressing all four of its SO_2 nonattainment areas. EPA is taking separate action on Indiana's plans for its other nonattainment areas: EPA proposed action on plans for the other three areas (Indianapolis, Terre Haute and Southwest Indiana) on August 15, 2018, at 83 FR 40487, and took final action on the plans for Indianapolis and Terre Haute on March 22, 2019, at 84 FR 10692. EPA continues separate review of the plan for Southwest Indiana.

In addition to its October 2, 2015 submittal, Indiana made four supplemental submittals, three of which are relevant specifically to Morgan County. While the October 2, 2015 submittal included rules that imposed work practice requirements on both the Indianapolis Power and Light-Eagle Valley power plant (IP&L-Eagle Valley) and Hydraulic Press Brick, Indiana rescinded the submittal of the requirements for Hydraulic Press Brick on June 7, 2017. However, Indiana then withdrew this rescission on February 12, 2019, reactivating its request for EPA to approve these requirements. On February 8, 2019, Indiana submitted additional analysis for Morgan County to demonstrate that use of a more conservative approach to estimating background concentrations in this area also resulted in the conclusion that the area is attaining the SO_2 NAAQS. In addition, on November 15, 2017, Indiana provided clarifications on its inventory procedures and other elements of its four nonattainment plans.

EPA published a notice of proposed rulemaking addressing Indiana's plan for the Morgan County SO_2 nonattainment area on July 9, 2019, at 84 FR 32672. EPA proposed to approve rules that require IP&L-Eagle Valley to burn natural gas (rather than coal) in its primary boilers and that require Hydraulic Press Brick to conduct dry sorbent injection sufficient to achieve 50 percent emission reduction (except to the extent that this control is not necessary for SO_2 emissions to be below 2.5 pounds per million British Thermal Units). EPA proposed to conclude that Indiana has demonstrated that these requirements provide for the Morgan County area to attain the SO_2 NAAQS. Finally, EPA proposed to conclude that Indiana has satisfied the other applicable requirements for nonattainment areas, including requirements for a suitable emissions inventory, for reasonably available control measures/reasonably available control technology (RACM/RACT), for reasonable further progress (RFP), and for contingency measures.

II. Comments

EPA received no comments on its notice of proposed rulemaking. EPA also has no other reason to reevaluate its proposed approval of Indiana's plan for the Morgan County SO_2 nonattainment area.

III. EPA's Final Action

EPA is approving Indiana's SIP submission for the Morgan County SO_2 nonattainment area, which the state submitted to EPA on October 2, 2015 and supplemented on June 7, 2017, November 15, 2017, February 8, 2019, and February 12, 2019. This SO_2 nonattainment plan included Indiana's attainment demonstration for this area. The nonattainment plan also addressed requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Indiana has previously addressed requirements regarding nonattainment area new source review (NSR). EPA has determined that Indiana's SO_2 nonattainment plan for Morgan County meets the applicable requirements of Clean Air Act sections 110, 172, 191, and 192.

The rules that underpin Indiana's attainment plan for Morgan County include three rules. Indiana Administrative Code, Title 326, Rule 7–4–11.1 (326 IAC 7–4–11.1, entitled ''Morgan County sulfur dioxide emission limitations'') imposes the work practice requirements described above. Indiana's SO_2 nonattainment plans also include two rules specifying compliance provisions, namely Rule 326 IAC 7–1.1–3 (entitled ''Compliance date'') and Rule 326 IAC 7–2–1 (entitled ''Reporting requirements; methods to determine compliance''). However, EPA has already approved these two compliance rules, as part of final action to approve Indiana's plan for the Indianapolis and Terre Haute areas. Therefore, while EPA

reaffirms the role of these two rules in the Morgan County plan, EPA need not reapprove and is not reapproving these rules as part of today's action. Instead, the codification for this rule only adds the approval of Morgan County limits in Rule 326 IAC 7–4–11.1.

In addition to codifying approval of these rules, EPA is also codifying its approval of Indiana's attainment plan for Morgan County. EPA's prior action to approve the attainment plans for the Indianapolis and Terre Haute areas (published March 22, 2019 at 84 FR 10692) did not codify approval of those plans; for administrative convenience, codification of those approvals is included with the codification of this action.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of an Indiana regulation described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the applicable person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 4, 2019.

Cheryl L Newton,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.770 is amended:

■ a. In the table in paragraph (c), under ''Article 7. Sulfur Dioxide Rules'', ''Rule 4. Emission Limitations and Requirements by County'', by removing the entry for ''7–4–11'' and adding in its place an entry for ''7–4–11.1''; and

■ b. In the table in paragraph (e) by:

■ i. Adding an entry for ''Indianapolis 2010 Sulfur Dioxide (SO_2) Attainment Plan'' after the entry for ''Indianapolis Hydrocarbon Control Strategy'';

■ ii. Adding an entry for ''Morgan County 2010 Sulfur Dioxide (SO_2) Attainment Plan'' before the entry for ''Muncie 1997 8-hour ozone maintenance plan''; and

■ iii. Adding an entry for ''Terre Haute 2010 Sulfur Dioxide (SO_2) Attainment Plan'' before the entry for ''Terre Haute 2010 Sulfur Dioxide (SO_2) maintenance plan''.

The revision and additions read as follows:

[1] 62 FR 27968 (May 22, 1997).

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 7. Sulfur Dioxide Rules				
*	*	*	*	*
Rule 4. Emission Limitations and Requirements by County				
*	*	*	*	*
7–4–11.1	Morgan County sulfur dioxide emission limitations.	7/5/2019	9/23/2019, [insert **Federal Register** citation]	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Indianapolis 2010 Sulfur Dioxide (SO_2) Attainment Plan.	10/2/15	3/22/2019, 84 FR 10692	
*	*	*	*
Morgan County 2010 Sulfur Dioxide (SO_2) Attainment Plan.	10/2/15	9/23/2019, [insert **Federal Register** citation]	
*	*	*	*
Terre Haute 2010 Sulfur Dioxide (SO_2) Attainment Plan.	10/2/15	3/22/2019, 84 FR 10692	
*	*	*	*

[FR Doc. 2019–20130 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0328; FRL–9999–73—Region 7]

Air Plan Approval; Missouri; Rescission of Information on Sales of Fuels To Be Provided and Maintained and Certain Coals To Be Washed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revision submissions from the State of Missouri. In these submissions, the State requested that two rules relating to the sales of fuel and coal washing be rescinded from the Missouri SIP. The EPA received both submissions on December 4, 2018, and received supplemental information for both submissions on May 6, 2019. The EPA reviewed the submissions and supplemental information and determined that rescission of these rules from the SIP does not impact the stringency of the SIP or air quality. Approval of the submissions will ensure consistency between state and federally approved rules and is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 23, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0328. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–

7016; email address *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

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II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
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VII. Statutory and Executive Order Reviews

I. Background

On July 2, 2019, the EPA proposed the rescission of two rules relating to the sales of fuel and coal washing be rescinded from the Missouri SIP in the **Federal Register.** *See* 84 FR 31541. The EPA solicited comments on the proposed SIP revisions and received one comment.

II. What is being addressed in this document?

The EPA is approving two requests to revise the Missouri SIP, received on December 4, 2018. Supplemental information for both submissions was received on May 6, 2019. In the submissions, the State requested that two rules, found at Title 10, Division 10 of the code of state regulations (CSR)–10 CSR 10–5.120 *Information on Sales of Fuels to be Provided and Maintained* and 10 CSR 10–5.130 *Certain Coals to be Washed*- be rescinded from the Missouri SIP. A detailed discussion of the submissions was provided in the EPA's July 2, 2019, **Federal Register** document and in a technical support document (TSD) in the docket to this action. *See* 84 FR 31541.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of the revisions from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. The State received and addressed one comment. The comment was from the EPA and was general in nature. No changes were made to the proposals to rescind the rules in response to the EPA's comment. As explained in more detail in the TSD, which is part of this docket, the SIP revision submissions met the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's response to comment received?

The public comment period opened the date of the publication the EPA's proposed rule in the **Federal Register**, July 2, 2019, and closed on August 1, 2019. During this period, the EPA received one comment.

Comment: The commenter stated that the EPA must perform it's own search of residential sources and positively determine whether there are any residences that burn coal or residual fuel oil as a heating source, and, if the EPA were to find a residential source, it must evaluate any relaxations that could occur by allowing the State to remove the regulations from the SIP.

Response: The commenter is concerned that the EPA did not fully evaluate if rescinding the coal washing and fuel sale receipt rules would result in relaxations in air quality standards because there may or may not be residential consumers of coal and/or fuel oil. As noted in the TSD (provided in the docket to this rulemaking), the EPA did not evaluate potential emissions from residential consumers because it and the state were not aware of any. The rules pre-dated the CAA and were promulgated to reduce impacts from smoke and soot in the St. Louis metropolitan area. When the rules were promulgated in the 1960's, inexpensive bituminous coal, high in sulfur content and ash, was in abundant supply in nearby southern Illinois. Almost all industrial and commercial facilities, as well apartment buildings and single-family homes, burned this coal contributing to the smoke problem in the city. The rules were intended to move consumers toward burning better quality coal and fuel oil in the metro area. 10 CSR 10–5.120 functioned purely to monitor the sale of fuel oil and coal and 10 CSR 10–5.130 required consumers of coal with more than 2 percent sulfur and/or 12 percent ash to wash the coal prior to burning it.

In order to address the commenter's concern regarding the EPA's consideration of impacts from residential users, the EPA reviewed historical household fuel use data provided by the U.S. Census Bureau.[1] As shown in Table 1, in 2000, there are were no residential users of coal and only 0.6 percent of households using fuel oil, in all of Missouri. A review of heating fuel use from 1940 to 2000 shows a significant decline in residential fuel oil and coal usage and a significant increase in residential use of utility gas and electricity.

TABLE 1—MISSOURI HISTORICAL CENSUS—HOUSE HEATING FUEL USE

[Fuel use provided in percent]

Year	Occupied units	Utility gas	LP gas	Electricity	Fuel oil	Coal	Wood	Other	No fuel
2000	2,194,594	57.5	13.4	24.5	0.6	0	3.5	0.2	0.2
1990	1,961,206	60.4	12	18.1	1.5	0	7.6	0.2	0.1
1980	1,793,399	65	14.3	11.7	3.5	0.1	5.2	0.2	0
1970	1,520,567	67.8	16.7	2.9	8.7	0.9	2.5	0.4	0.1
1960	1,359,973	51.3	9.9	0.4	17.1	12.2	8.8	0.2	0.1
1950	1,162,305	24.5	2	0.2	15.8	40.1	15.4	1.4	0.3
1940	1,049,033	4.7	NA	NA	3.5	61.7	29.9	0.1	0.1

Even if the EPA were to become aware of a residential consumer of coal or fuel oil in the St. Louis metropolatin area, neither rule regulated emissions of sulfur dioxide (SO_2) or particulate matter (PM), nor did the rules limit the amount of fuel oil or coal that could be burned. There would not be a relaxation in direct emissions from residential consumers attributed to the rules' rescission because, as mentioned, there was no existing limitation on those direct emissions. Additionally, the state did not rely on 10 CSR 10–5.120 or 10 CSR 10–5.130 for any quantifiable emission reductions in any plan to attain or maintain any National Ambient Air Quality Standard (NAAQS).

[1] *https://www.census.gov/hhes/www/housing/census/historic/fuels.html.*

V. What action is the EPA taking?

The EPA is ammending the Missouri SIP by rescinding 10 CSR 10–5.120 *Information on Sales of Fuels to be Provided and Maintained* and 10 CSR 10–5.130 *Certain Coals to be Washed.* Approval of these revisions will ensure consistency between State and federally-approved rules. These rescissions will not impact air quality since the rules do not effectively limit emissions or the amount of fuel that can be burned and do not function to achieve attainment or maintenance of the National Ambient Air Quality Standards (NAAQS).

VI. Incorporation by Reference

In this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Certain coals to be washed, Incorporation by reference, Information on fuel sales, Particulate matter, Rescission, Sulfur dioxide.

Dated: September 11, 2019.

Mike Brincks,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—AA Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing entries ''10–5.120'' and ''10–5.130'' under the heading ''Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area''.

[FR Doc. 2019–20321 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0673; FRL–9999–17–Region 6]

Air Plan Approval; Texas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 ozone NAAQS (infrastructure SIP or i-SIP).

DATES: This rule is effective on October 23, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0673. All documents in the docket are listed on the *https://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 *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–6521, *paige.carrie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. 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 April 30, 2019 proposal (84 FR 18186). In that document we proposed to approve the August 17, 2018 i-SIP submittal from the Texas Commission on Environmental Quality (TCEQ) for the 2015 ozone NAAQS in its entirety. We also proposed to approve the portions of the August 17, 2018 Transport submittal from the TCEQ for the 2015 ozone NAAQS that address CAA section 110(a)(2)(D)(i), pertaining to the prevention of significant deterioration in other states for ozone (sub-element 3 or prong 3), and CAA section 110(a)(2)(D)(ii). Our proposal did not evaluate the portions of the August 17, 2018 Transport submittal from the TCEQ for the 2015 ozone NAAQS that address sub-elements (prongs) 1, 2, and 4 of CAA section 110(a)(2)(D)(i), but stated that we would address such in a separate action.

We received one comment in support of our proposal and one relevant adverse comment. The comments are posted in the docket for this action. Our responses to the comments are provided below.

II. Response to Comments

Comment: The TCEQ submitted a comment in support of EPA's proposed determination that the Texas SIP meets the infrastructure requirements for the 2015 ozone NAAQS as proposed, and reiterated that prongs 1, 2, and 4 of CAA section 110(a)(2)(D)(i) will be addressed by the EPA in a separate rulemaking.

Response: We acknowledge the TCEQ's support of our proposed action.

We received one adverse, relevant comment letter from an anonymous source (''Commenter''). We are separating the comments and our responses to each below:

Comment: Commenter asks how the visibility portion of CAA section 110(a)(2)(J) ''can be approved'' if Texas's visibility portion of CAA section 110(a)(2)(D)(i)(II) (prong 4) ''cannot be approved.'' Commenter also states that EPA must take consistent action on both visibility elements and either approve or disapprove both. Commenter states that EPA cannot take later separate action on one and state that no new requirements are applicable in element (J) when there is a new or revised NAAQS. Commenter questions why states must submit infrastructure SIPs if a new or revised NAAQS requires no new visibility obligations triggered under CAA section 110(a)(2)(J) and, for all other elements, potentially excluding elements (A), (B), (C), and (D)(i)(I), no additional requirements or obligations are placed on states. The commenter asks that if states must revise their SIP for elements (E) through (M), and potentially (A) through (D)(i)(I), why would visibility requirements of element (J) be exempt from this process. The commenter states that EPA must require Texas to address the visibility portion of element (J) unless EPA is willing to exempt other elements from section 110(a)(2) from the need to revise their SIPs under the Infrastructure requirements.

Response: In this action, EPA has explained that it is not evaluating and will address in a separate action requirements for Texas under the 2015 ozone NAAQS related to ''prong 4,'' CAA section 110(a)(2)(D)(i)(II)), which generally requires a SIP to contain adequate provisions prohibiting emissions within the state from ''interfering with measures required to be in the applicable implementation plan for any other State under part C of this subchapter . . . to protect visibility.'' See Infrastructure SIP Guidance 32–35 (providing guidance on how states may satisfy their prong 4 obligations).[1] EPA considers prong 4 to be ''pollutant-specific,'' such that an infrastructure SIP submission need only address the potential for interference with protection of visibility based on the pollutant (including precursors) to which the new or revised NAAQS applies. See *id.* at 33. Oxides of nitrogen are ozone precursors subject to the revised 2015 ozone NAAQS and they are also visibility-impairing pollutants. Therefore, EPA acknowledges that we will need to assess prong 4 as related to oxides of nitrogen in the Texas August 17, 2018 Transport SIP submittal for the 2015 ozone NAAQS. However, as EPA makes clear, we are not addressing prong 4 in this action.

We disagree with Commenter that EPA cannot take separate action on CAA section 110(a)(2)(D)(i)(II) prong 4. EPA interprets its authority under CAA section 110(k) as affording the Agency the discretion to approve, disapprove, or conditionally approve, individual elements of the Texas infrastructure and Transport submissions for the 2015 ozone NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I) and (II), as severable from other infrastructure SIP elements and interprets section 110(k) as allowing it to act on individual severable elements or requirements in a SIP submission. In short, EPA has the discretion under CAA section 110(k) to act upon the various individual elements of a state's infrastructure SIP submission, separately or together, as appropriate. As stated in the proposal and earlier in this final action, EPA will address the remaining sub-elements (prongs 1, 2, and 4) of CAA section 110(a)(2)(D)(i) in a separate rulemaking action or actions.

Section 110(a)(2) (J)'s visibility requirements need not be addressed in this i-SIP because a state's requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. The visibility sub-element of element (J), CAA section 110(a)(2)(J) is different than for prong 4; the revised NAAQS here does not give rise to additional visibility obligations that would be appropriate to address in an infrastructure SIP. Under 40 CFR part 51 subpart P, implementing the visibility requirements of CAA title I, part C, states are subject to requirements for reasonably attributable visibility impairment, new source review for possible impacts on air quality related values in Class I areas, and regional haze planning. These include timeframes for SIP submittals related to

[1] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. Such Guidance is posted in the docket for this rulemaking and also at *https://www.epa.gov/ground-level-ozone-pollution/infrastructure-state-implementation-plan-sip-requirements-and-guidance.*

visibility requirements. See, *e.g.,* 40 CFR 51.308(b) (establishing a deadline for initial SIPs to meet regional haze requirements of December 17, 2007). Our proposed action contains the relevant language regarding the visibility sub-element of element (J), and our rationale is not changing from the proposed action to this final action. As EPA recognized in the 2013 Infrastructure SIP Guidance, generally speaking, when the EPA establishes or revises a NAAQS, the visibility requirements under part C of title I of the CAA do not change. See Guidance at 54–55. There are no new visibility protection requirements under part C as a result of the revised NAAQS here. Therefore, there are no newly applicable visibility protection obligations pursuant to element (J) applicable in or to Texas, and this sub-element is therefore not being addressed in this action. For this reason, unlike prong 4, EPA does not intend to take action at a later time addressing this sub-element of element (J) for Texas in the context of infrastructure SIP requirements for the 2015 ozone NAAQS.

The lack of newly applicable obligations is not an exemption from meeting visibility requirements of the CAA. In fact, EPA, Texas, and other stakeholders have been engaged in a series of ongoing actions, rulemakings, and litigation related to the State's visibility obligations for the first regional haze planning period under subpart P. See generally EPA's Fourteenth Status Report on Remand, *Texas* v. *EPA,* No. 16–60118 (5th Cir. May 30, 2019) (briefly summarizing recent history of actions related to regional haze in Texas).[2] Furthermore, Texas and other states are in the process of developing SIPs for the second planning period, which are due to EPA July 31, 2021. See Final Rule, Protection of Visibility: Amendments to Requirements for State Plans (82 FR 3078, January 10, 2017). It is wholly appropriate for EPA to apply the 2013 Guidance here to conclude that in the absence of any new visibility obligations occasioned by the 2015 ozone NAAQS, Texas' infrastructure SIP need not address pre-existing visibility obligations already being addressed in those separate, ongoing actions.

Commenter also generally questions EPA's guidance that some elements in CAA section 110(a)(2) are to be included in infrastructure SIPs while the visibility sub-element of element (J), are not. EPA's views on the appropriate treatment of the various requirements of section 110(a)(2) are generally set out in the 2013 Guidance cited above. EPA has explained above the basis for its treatment of the prong 4 and the visibility sub-element of element (J) in this action, which is consistent with the Guidance as well as the facts and circumstances related to this revised NAAQS for Texas.

Comment: Commenter states that EPA must conduct a more detailed financial accounting of the State's finances and staffing needs. Commenter states that EPA cannot take the State's word and the onus should not be on the public to disprove the State's statements on financial security or staffing requirements. Commenter states that EPA is responsible for determining whether the State has the necessary staffing and funding to implement the SIP under section 110(a)(2)(E) and (L).

Response: We disagree with Commenter that EPA must conduct a more detailed accounting of the State's finances and staffing needs. Section 110(a)(2) does not require a specific quantitative metric or methodology for determining adequate resources. CAA section 110(a)(2)(E) requires that the state provide necessary assurances that it will have adequate funding under state law to carry out the SIP. As described in our TSD, to address adequate funding, the Texas statute charges the TCEQ with preparing and developing the SIP and provides the agency with ''[. . .] powers necessary or convenient to carry out its responsibilities'' (see Texas Health and Safety Code (THSC) Title 5, Subtitle C, Chapter 382). To address funding, the Texas statute provides that ''[t]he commission shall request the appropriation of sufficient money to safeguard the air resources of the state'' (see THSC 382.0622). As cited in our TSD, these State statute-assured funds are supplemented by Federal funds, including CAA section 103 and section 105 grants. Consequently, there are additional monetary sources which contribute to Texas' ability to provide adequate personnel and funding to implement the SIP for the 2015 ozone NAAQS.

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit. As described in our TSD, Texas statute provides TCEQ the authority to collect fees for applications, permits, and inspections (see THSC section 382.062) and thus receives fees for such, as well as for penalties and interest on fees owed. Texas requires that applicable sources meet the requirements in 30 TAC 116, Subchapter B, which includes permit fees and establishes the fee schedule for permits by rule (see 30 TAC 106, Subchapter B, Section 106.50, approved into the Texas SIP at 74 FR 11851, March 20, 2009). State rules that address determination and payment of fees, prevention of significant deterioration (PSD) permit fees, renewal application fees, and fees for standard and flexible permits are approved in the Texas SIP (see 74 FR 11851 and 80 FR 42729, July 20, 2015). State rules that address fees for electric generating facilities (see 76 FR 1525, January 11, 2011), small business stationary source permits, pipeline facility permits, and existing facility permits are also approved in the Texas SIP (see 79 FR 577, January 6, 2014). In addition, Texas statute provides TCEQ authority to collect fees for vehicle inspection and maintenance programs in several nonattainment areas and in the Austin area (see THSC sections 382.202 and 382.302) and these rules are approved in the Texas SIP (see 70 FR 45542, August 8, 2005 and 81 FR 69684, October 7, 2016).

Finally, Commenter provides no evidence to support their concerns regarding the State's submittal addressing CAA sections 110(a)(2)(E) and (L). As described in our proposal, TSD, and previously in this response, the EPA's evaluation and approval of adequate resources for Texas are based upon various sources of funding, state statutes and rules pursuant to section 110(a)(2). We do not understand Commenter's concern regarding the State's ''statements on financial security or staffing requirements'' since such documentation was neither required nor submitted.

III. Final Action

We are approving the August 17, 2018 Texas i-SIP submittal for the 2015 ozone NAAQS in its entirety. We are also approving the portion of the August 17, 2018 Texas Transport submittal for the 2015 ozone NAAQS that addresses CAA section 110(a)(2)(D)(i), pertaining to the prevention of significant deterioration in other states for ozone, and CAA section 110(a)(2)(D)(ii). Our final action on the specified CAA section 110(a)(2) elements is detailed in Table 1, shown below.

[2] Status Report is posted in the docket for this rulemaking.

TABLE 1—FINAL ACTION ON TEXAS INFRASTRUCTURE AND TRANSPORT SIP SUBMITTALS FOR THE 2015 OZONE NAAQS

Element	Final action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (sub-elements 1 and 2)	SA
(D)(i)(II): PSD (sub-element 3)	A
(D)(i)(II): Visibility protection (sub-element 4)	SA
(D)(ii): Interstate and international pollution abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table: A: Approved; +: Not germane to infrastructure SIPs; SA: EPA to address this infrastructure requirement in a separate rulemaking action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: September 16, 2019.

David Gray,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e), titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,'' is amended by adding the entry ''Infrastructure and Interstate Transport for the 2015 Ozone NAAQS'' at the end of the table to reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Infrastructure and Interstate Transport for the 2015 Ozone NAAQS.	Statewide	8/17/2018	9/23/2019, [Insert **Federal Register** citation].	Approval for CAA elements 110(a)(2)(A), (B), (C), (D)(i)(II) (portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2019–20314 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0730; FRL–9999–75–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of Stage II Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. This SIP revision removes requirements for gasoline vapor recovery equipment (also known as Stage II vapor recovery) on fuel dispensers at both new and upgrading gasoline dispensing facilities (GDFs) in Stage II subject areas of Maryland and also allows for decommissioning of Stage II equipment at existing stations currently equipped with Stage II equipment. GDF owners may elect to retain existing Stage II equipment, but in doing so remain subject to Stage II requirements and must continue to test and maintain Stage II equipment in accordance with program requirements. EPA determined that Maryland's August 25, 2017 SIP revision is approvable in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0730. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 2019 (84 FR 3369), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland's request to remove requirements for new and modified Stage II equipment in the Stage II subject areas of the State, while allowing the option to decommission Stage II equipment at subject GDFs that do not yet wish to decommission Stage II equipment. This SIP revision applies to GDFs in the Baltimore area, the Maryland portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD area and the Maryland portion of the Washington, DC-MD-VA area. The formal SIP revision being approved [Maryland SIP Revision #17–05] was submitted by the Maryland Department of the Environment (MDE) as a formal SIP revision on August 25, 2017. The details of Maryland's August 25, 2017 SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. See 84 FR 3369. That NPRM also contained a detailed analysis showing that Maryland's removal of the Stage II requirements would not interfere with any Maryland area's ability to attain or maintain any NAAQS, or any other applicable requirement of the CAA. The public comment period for this NPRM closed on March 14, 2019. EPA received no public comments on the NPRM.

II. Summary of SIP Revision and EPA Analysis

Maryland's August 25, 2017 SIP revision [Maryland SIP Revision #17–05] consists of amendments and additions by MDE to COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities* (as finalized November 13, 2015 and state effective November 23, 2015). These state amendments allow new GDFs (and those undergoing major modifications) in affected Stage II areas the option to choose not to install Stage II equipment or to decommission

existing Stage II equipment. The state revisions to COMAR 26.11.24 include the amendment to Regulations .01, .01–1, .02, .03, .04, .07 and the addition of a new Regulation .03–1. The SIP revision also contains a demonstration that removal of the Stage II program requirements does not interfere with the attainment or maintenance of any national ambient air quality standard (NAAQS) or any other applicable requirement of the CAA.

Stage II vapor recovery is an emission control system that is installed on gasoline dispensing equipment at GDFs for the purpose of capturing fuel vapor that would otherwise be released from vehicle gas tanks into the atmosphere during vehicle refueling. Stage II vapor recovery systems installed on dispensing equipment capture these refueling emissions at the dispenser and route the refueling vapors back to the GDF's underground storage tank, preventing volatile organic compounds (VOCs) that comprise these vapors from escaping to the atmosphere. Stage II vapor recovery systems were required by section 182(b)(3) of the CAA, which required areas classified as moderate and above ozone nonattainment to implement Stage II vapor recovery programs and also under CAA section 184(b)(2), which required states in the Northeast Ozone Transport Region (OTR) to implement Stage II or comparable measures.

Section 202(a)(6) of the CAA also required EPA to regulate new vehicles to require capture of refueling vapor emissions under section 202(a)(6). Since model year 1998, newly manufactured gasoline-burning cars and trucks have been equipped with on-board refueling vapor recovery (ORVR) systems that utilize carbon canisters installed directly on the vehicle to capture refueling vapors in the vehicle to be later routed to the vehicle's engine for combustion during engine operation. Congress recognized that these two requirements would become redundant once sufficient new vehicles were introduced into commerce to alleviate the need for GDF-based gasoline refueling vapor control. Therefore, CAA section 202(a)(6) allows the EPA Administrator to waive the requirements for Stage II requirements in moderate ozone nonattainment areas upon determination that vehicle-based, onboard vapor recovery systems were in ''widespread use.'' EPA issued this ''widespread use'' determination via a final rule published in the May 16, 2012 **Federal Register** (77 FR 28772).

In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the interaction between ORVR systems and certain configurations of Stage II vapor recovery systems result in the reduction of overall control system efficiency in capturing VOC refueling emissions compared to what would otherwise be achieved by ORVR or Stage II acting in the absence of the other. In its May 16, 2012 widespread use rulemaking, EPA not only waived requirements for Stage II equipment at GDFs in new ozone nonattainment areas, but also allowed states currently implementing Stage II vapor recovery programs to submit SIP revisions that would discontinue requirements for new and existing Stage II vapor recovery systems.

III. Final Action

EPA is approving Maryland's August 25, 2017 SIP revision to incorporate state revisions to the Stage II program to the Maryland SIP, applicable to the Baltimore area and Maryland portions of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD and Washington, DC-MD-VA areas. Specifically, EPA is removing from the Maryland SIP requirements for the operation of a Stage II program in these areas, while adding new Stage II requirements for decommissioning programs and adding requirements applicable to GDFs that refrain from decommissioning existing stations.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revisions to COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities* (as finalized November 13, 2015 and state effective November 23, 2015). This revised rule removes Stage II vapor recovery requirements for new and modified GDFs in subject Maryland areas. The revised rule also adds decommissioning requirements for GDFs electing to decommission existing Stage II equipment, as well as new testing and other criteria applicable to GDFs with existing Stage II equipment that opt not to decommission existing Stage II equipment. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

[1] 62 FR 27968 (May 22, 1997).

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This action to remove Stage II requirements for Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) under the heading ''26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities'' is amended by:

■ a. Revising the entries for ''26.11.24.01'', ''26.11.24.01–1'', ''26.11.24.02'', and ''26.11.24.03'';

■ b. Adding an entry in numerical order for ''26.11.24.03–1''; and

■ c. Revising the entries ''26.11.24.04'' and ''26.11.24.07 ''.

The revisions and addition read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities				
26.11.24.01	Definitions	11/23/2015	9/23/19, Insert **Federal Register** citation].	Add to B. definitions 8–1 ''major modification,'' 14–1 ''Stage I vapor balance system,'' and 16–1 ''Tank System.'' Revise definition (14) ''Owner.'' Previous approval 1/17/2008.
26.11.24.01–1	Incorporation by Reference.	11/23/2015	9/23/19, Insert **Federal Register** citation].	Incorporate new test methods B.6, B.7, and B.8. Previous approval (c)(178).
26.11.24.02	Applicability, Exemptions, and Effective Date.	11/23/2015	9/23/19, Insert **Federal Register** citation].	Remove paragraphs E and F. Previous approval (c)(178).
26.11.24.03	General Requirements	11/23/2015	9/23/19, Insert **Federal Register** citation].	Revise paragraph A, add paragraph A–1, revise paragraph B, and add paragraph J. Prior approval (c)(178).
26.11.24.03–1	Decommissioning of the Stage II Vapor Recovery System.	11/23/2015	9/23/19, Insert **Federal Register** citation].	
26.11.24.04	Testing Requirements	11/23/2015	9/23/19, Insert **Federal Register** citation].	Revise paragraph A and add A.6 and A.7. Add paragraph A–1. Revise C.2.
*	*	*	*	*
26.11.24.07	Recordkeeping and Reporting Requirements.	11/23/2015	9/23/19, Insert **Federal Register** citation].	Revise paragraph E and revise E.3.
*	*	*	*	*

* * * * *

[FR Doc. 2019–20197 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0336; FRL–9999–74–Region 7]

Air Plan Approval; Missouri; Removal of Control of VOC Emissions from Traffic Coatings

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Missouri on December 3, 2018. Missouri requests that the EPA remove a rule related to control of volatile organic compounds (VOCs) from traffic coatings from its SIP. This rescission does not have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 23, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0336. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

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VII. Statutory and Executive Order Reviews

I. Background

On July 2, 2019, the EPA proposed rescinding a State rule relating to VOC emissions from traffic coatings from the Missouri SIP in the **Federal Register**. *See* 84 FR 31538. The EPA solicited comments on the proposed SIP revision and received one comment.

II. What is being addressed in this document?

The EPA is approving a request to revise the Missouri SIP, received on December 3, 2018. Missouri requested that a State rule, found at Title 10, Division 10 of the code of state regulations (CSR)—10–5.450, *Control of VOC Emissions from Traffic Coatings*—be rescinded from the Missouri SIP. A detailed discussion of the submission was provided in the EPA's July 2, 2019, **Federal Register** document. *See* 84 FR 31538.

III. Have the requirements for approval of a SIP revision been met?

The submission has met the public notice requirements in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. Missouri provided public notice of the SIP revision from February 28, 2018, to March 30, 2018, and received two comments. Missouri did not make any changes to the rescission based on the comments received. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's response to comment received?

The public comment period opened on the date of publication of the EPA's proposed rule in the **Federal Register**, July 2, 2019, and closed on August 1, 2019 *See* 84 FR 31538. During this period, the EPA received one comment. The comment can be found in the docket to this rulemaking.

Comment: The commenter questioned whether the submittal was actually a complete SIP revision submittal. Additionally, the commenter believed that the record was incomplete because the submission included a portion of the transcript of the public hearing.

Response: The commenter is concerned the submission was incomplete and asserted that the EPA should reopen the public comment period after Missouri submitted additional information. The commenter is looking for a demonstration that the rule rescission will not affect attainment and maintenance of the national ambient air quality standards and a complete transcript of the public hearing.

First, the EPA agrees with the commenter that Missouri did not include a demonstration with its submission as indicated in its's own response to comment (published in the Missouri Register and included in the docket to this rulemaking). However, the EPA determined that the additional information was not necessary to move forward with SIP revision request. As noted in the notice of proposed rulemaking, Missouri's state rule—10–5.450, *Control of VOC Emissions from Traffic Coatings*—was replaced with a reliance on the Federal rule at 40 CFR part 59, subpart D—*National Volatile Organic Compound Emission Standard for Architectural Coatings.* Both rules have an identical limit of one hundred fifty (150) grams of volatile organic compounds per liter of coating and one point twenty-six (1.26) pounds per gallon. The Federal rule became effective on September 11, 1998 (63 FR 48877, August 11, 2004). The State rule was approved into the SIP in 2000 (65 FR 8060, February 17, 2000). Because the Federal rule applies to sources in Missouri, the State rule was duplicative, likely unnecessary at the time it was approved into the SIP, and as such, not necessary.

Second, the commenter notes that Missouri included a portion of the transcript of the public hearing in its submission but not the whole transcript. The EPA believes this is an acceptable practice that meets the completeness criteria of 40 CFR part 51, appendix V. Section 2.1(g) of appendix V requires the State provide certification that a public hearing was held consistent with the public hearing requirements in 40 CFR 51.102. 40 CFR 51.102(e) requires the State to prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, at a minimum, a list of witnesses with the text of each presentation. Neither the EPA Administrator, nor his designee, the Region 7 Regional Administrator, requested an inspection of the record of the hearing. Although the transcript is not required to meet completeness criteria, the State's website provides

contact information for obtaining a copy.

V. What action is the EPA taking?

The EPA is ammending the Missouri SIP by rescinding 10 CSR 10–5.450. Approval of this revision will ensure consistency between State and federally-approved rules. The rescission will not impact air quality as the State rule is duplicative of the Federal rule.

VI. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 11, 2019.

Mike Brincks,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—AA Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–5.450'' under the heading ''Chapter 5-Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area''.

[FR Doc. 2019–20320 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0043; FRL–9999–78–Region 5]

Air Plan Approval; Illinois; State Board and Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Illinois state implementation plan (SIP) addressing the state board requirements under section 128 of the Clean Air Act (CAA) and the related infrastructure element for several National Ambient Air Quality Standard (NAAQS) infrastructure submissions. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on October 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0043. All

documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP.'' This rulemaking addresses a January 25, 2018, submission from the Illinois Environmental Protection Agency (IEPA) addressing section 128 requirements and revisions to infrastructure SIP submissions for the 2006 fine particulate matter ($PM_{2.5}$), 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO_2), 2010 sulfur dioxide (SO_2), and 2012 $PM_{2.5}$ NAAQS specific to CAA section 110(a)(2)(E) (also known as ''element E''). EPA is not acting on the 2012 $PM_{2.5}$ NAAQS infrastructure revision in this rulemaking.

II. What is our response to comments received on the proposed rulemaking?

The proposed rulemaking associated with this final action was published on May 16, 2019 (84 FR 22082), and EPA received one comment during the comment period, which ended on June 17, 2019. A synopsis of the adverse comment, as well as EPA's response, is discussed below.

Comment: The commenter suggests that the proposed SIP revision is not approvable because definitions of several of the key terms are not located anywhere in the Illinois Administrative Code, specifically ''significant portion of income,'' ''represent the public interest,'' ''adequately disclosed,'' ''conflict of interest,'' and ''bias.'' The commenter also states that the text of the new SIP provision does not specify that it applies to the Pollution Control Board or to the IEPA.

Response: EPA disagrees that this action is not approvable for the reasons stated in the comment. The language that the state has adopted and that EPA is approving into the Illinois SIP is identical to the language in CAA section 128, and therefore meets the statutory requirements. When appropriate, EPA allows states to adopt identical language from the CAA into a SIP for statutory and regulatory requirements. EPA notes that the CAA itself does not define the terms noted by the commenter, and therefore the meanings may depend upon the specific facts and circumstances of a given situation. While EPA's 1978 guidance for CAA section 128 provides recommended definitions, the guidance also specifies that it does not create a requirement that all SIPs must include EPA's suggested definitions for CAA section 128 verbatim, or that states must include any such definitions in SIPs at all.[1] The legislative history of the 1977 amendments to the CAA also indicates that states have some flexibility to determine the specific provisions needed to satisfy the requirements of section 128, so long as the statutory requirements are met, specifically, the conference committee for the 1977 amendments stated that ''it is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].'' [2] EPA has previously approved SIP provisions with requirements that closely track or mirror the explicit statutory language of CAA section 128 as meeting the requirements of CAA section 128 into other states' SIPs.[3]

The SIP revision language is also clear that it applies to the Pollution Control Board and IEPA because the added language appears in the Illinois Administrative Code under Title 35: Environmental Protection, Subtitle A: General Provisions, Chapter 1: Pollution Control Board. Therefore, the ''Board'' referenced in the SIP revision is plainly referring to IEPA's Pollution Control Board because that board is the subject of the entire chapter. Thus, the Board is a ''board or body'' within the meaning of CAA section 128, and the state is properly imposing requirements on the Board through SIP provisions as required by CAA section 110(a)(2)(E)(ii).

III. What action is EPA taking?

EPA is approving 35 Ill. Adm. Code 101.112(d) as satisfying the requirements of CAA section 128. EPA is also approving the infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Final approval of this action will terminate the Federal Implementation Plan Clock started for the disapproval of CAA section 110(a)(2)(E)(ii) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS (*see* 80 FR 51730 (Aug. 26, 2015)).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the Illinois SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

[1] 1978 Guidance, ''Model Letter from Regional Offices to States,'' at 2–3.

[2] H.R. Rep. 95–564 (1977), reprinted in *Legislative History of the Clean Air Act Amendments of 1977,* 526–527 (1978).

[3] See also EPA proposed rule on South Dakota, 79 FR 71040, 71052, finalized at 80 FR 4799; and Alabama, 83 FR 5594, finalized at 83 FR 31454.

[4] 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 4, 2019.

Cheryl L Newton,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.720 is amended:

■ a. In the table in paragraph (c), under ''Chapter I: Pollution Control Board,'' by adding entries for ''Part 101: General Rules'' before ''Part 106: Procedural Regulations''; and

■ b. In the table in paragraph (e), under the heading ''Section 110(a)(2) Infrastructure Requirements,'' by revising the entries for ''2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Requirements'', ''2008 Lead NAAQS Infrastructure Requirements'', ''2008 Ozone NAAQS Infrastructure Requirements'', ''2010 NO_2 NAAQS Infrastructure Requirements'', and ''2010 SO_2 NAAQS Infrastructure Requirements''.

The additions and revisions read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 101: General Rules—Subpart A: General Provisions				
101.112	Bias and Conflict of Interest.	7/5/2017	9/23/2019, [Insert **Federal Register** citation].	Only paragraph (d).
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements				
*	*	*	*	*
2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Requirements.	Statewide	08/09/11, supplemented on 08/25/11, 06/27/12, and 7/5/2017.	9/23/2019, [Insert **Federal Register** citation].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2], (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2008 Lead NAAQS Infrastructure Requirements.	Statewide	12/31/12 and 7/5/2017	9/23/2019, [Insert **Federal Register** citation].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2008 Ozone NAAQS Infrastructure Requirements.	Statewide	12/31/12 and 7/5/2017	9/23/2019, [Insert **Federal Register** citation].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2], (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2010 NO_2 NAAQS Infrastructure Requirements.	Statewide	12/31/12 and 7/5/2017	9/23/2019, [Insert **Federal Register** citation].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2010 SO_2 NAAQS Infrastructure Requirements.	Statewide	12/31/12 and 7/5/2017	9/23/2019, [Insert **Federal Register** citation].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved, and (D)(i)(I) [Prongs 1 and 2], which have not yet been submitted. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
*	*	*	*	*

[FR Doc. 2019–20129 Filed 9–20–19; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9999–95–Region 6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the South Valley Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of Operable Units 1, 2, and 5 of the South Valley Superfund Site (Site) located in Albuquerque, New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to Operable Units 1, 2, and 5. Operable Units 3, 4, and 6 will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of New Mexico, through the New Mexico Environment Department, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: This action is effective September 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1983–0002. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 *https://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

Zimmerman Library, Government Information Department University of New Mexico, Albuquerque NM 87131, 505.277.9100, Monday–Thursday—7 a.m.– 2 a.m., Friday—7 a.m.–9 p.m., Saturday—10 a.m.–6 p.m., Sunday—12 p.m.–2 a.m.

New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505, 505.827.2855, Monday–Friday 8 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Michael A. Hebert, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, Mailcode—SEDRL, 1201 Elm Street, Dallas, Texas 75270–2102, 214–665–8315, email: *hebert.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: Operable Units 1, 2, and 5 of the South Valley Superfund Site, Albuquerque, New Mexico. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (83 FR 36838) on July 31, 2018.

The closing date for comments on the Notice of Intent for Partial Deletion was August 30, 2018. Based upon comments, the EPA conducted an informational meeting on December 11, 2018, in Albuquerque, New Mexico, to provide information to the public concerning the proposed partial deletion. Subsequently, the EPA reopened the public comment period published in the **Federal Register** (84 FR 33721) on July 15, 2019. The closing date for comments from the reopened comment period was August 14, 2019. All comments received since the July 31, 2018, Notice of Intent for Partial Deletion were considered by the EPA. Thirty-four comments, generally addressing the partial deletion process, were received during two public comment periods. The comments did not contain information indicating that the response actions for Operable Units 1, 2, and 5 did not meet the Site remedy decision requirements, or that these portions of the Site do not otherwise satisfy EPA criteria for partial deletion (included in Section 300.425(e) of the NCP and consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the NPL, 60 FR 55466 (Nov. 1, 1995)). Therefore, the EPA has determined that Operable Units 1, 2, and 5, will be deleted from the National Priorities List. A responsiveness summary was prepared and placed in both the docket, EPA–HQ–SFUND–1983–0002, on *www.regulations.gov,* and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 2019.

Ken McQueen,

Regional Administrator, Region 6.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by revising the entry for ''NM, South Valley'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* * *	* * *	* * *	
NM	South Valley	Albuquerque	P
* * *	* * *	* * *	

[a] Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * * * *

P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2019–20193 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2019–0003; Internal Agency Docket No. FEMA–8597]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action

under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi:				
Hancock County, Unincorporated Areas.	285254	June 30, 1970, Emerg; September 9, 1970, Reg; September 27, 2019, Susp.	September 27, 2019	September 27, 2019.
Pearl River County, Unincorporated Areas.	280129	October 16, 1979, Emerg; May 17, 1990, Reg; September 27, 2019, Susp.	.....do *	Do.
Picayune, City of, Pearl River County.	280130	May 13, 1974, Emerg; March 4, 1980, Reg; September 27, 2019, Susp.	.....do	Do.
Poplarville, City of, Pearl River County.	280365	N/A, Emerg; November 8, 2007, Reg; September 27, 2019, Susp.	.....do	Do.
Region X				
Alaska: Matanuska-Susitna Borough	020021	January 23, 1979, Emerg; May 1, 1985, Reg; September 27, 2019, Susp.	.....do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 12, 2019.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–20214 Filed 9–20–19; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 19–885]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Commission's rules, by reinstating certain vacant FM allotments. These FM allotments are considered vacant because of the cancellation of the associated authorizations and licenses, or the dismissal of long-form auction applications. Theses vacant FM allotments have previously undergone notice and comment rule making. Reinstatement of the vacant allotments is merely a ministerial action to effectuate licensing procedures. Therefore, we find for good cause that further notice and comment are unnecessary.

DATES: Effective September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* adopted September 5, 2019 and released September 6, 2019. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will not send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the *Order* is a ministerial action.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202, the table in paragraph (b) is amended as follows:

■ a. By adding an undesignated center heading ''US States'' before Alabama;

■ b. Under Alabama by adding an entry for ''Hamilton'' in alphabetical order;

■ c. Under Arizona by adding an entry for ''Aguila'' in alphabetical order and revising the entry for ''Bagdad'';

■ d. Under California by adding an entry for ''Sacramento'' in alphabetical order;

■ e. Under Massachusetts by adding an entry for ''Orange'' in alphabetical order;

■ f. Under Texas by revising the entries for ''Marathon'' and ''Mason'' and revising the entry for ''Roby''; and

■ g. By adding an undesignated center heading ''US Territories'' before American Samoa.

The additions and revisions read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[US States]

	Channel No.
ALABAMA	
* * * * *	
Hamilton	221A
* * * * *	
ARIZONA	
Aguila	297C2
Bagdad	299C3
* * * * *	
CALIFORNIA	
Sacramento	300B
* * * * *	
MASSACHUSETTS	
Orange	247A
* * * * *	
TEXAS	
* * * * *	
Marathon	276C1
Mason	281C2, 239C2
* * * * *	
Roby	290A
* * * * *	
U.S. Territories.	
* * * * *	

[FR Doc. 2019–20210 Filed 9–20–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY034

Fisheries of the Exclusive Economic Zone Off Alaska; Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) and Community Development Quota (CDQ) of Bering Sea and Aleutian Islands (BSAI) arrowtooth flounder and to the ITAC of Aleutian Islands (AI) Greenland turbot, AI sablefish, Bering Sea (BS) sablefish, BS ''other rockfish,'' Bering Sea and Eastern Aleutian Islands (BS/EAI) blackspotted/rougheye rockfish, Central Aleutian Islands and Western Aleutian Islands (CAI/WAI) blackspotted/rougheye rockfish, BSAI northern rockfish, BSAI sharks, and BSAI shortraker rockfish. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective September 18, 2019, through 2400 hrs, Alaska local time, December 31, 2019. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 3, 2019.

ADDRESSES: Submit your comments, identified by docket number NOAA–NMFS–2018–0089, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2018-0089,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 ITAC of AI Greenland turbot was established as 144 metric tons (mt), the 2019 CDQ and ITAC of AI sablefish was established as 1,971 mt, the 2019 CDQ and ITAC of BS sablefish was established as 1,433 mt, the 2019 ITAC of BS ''other rockfish'' was established as 234 mt, the 2019 ITAC of BS/EAI blackspotted/rougheye rockfish was established as 64 mt, the 2019 ITAC of CAI/WAI blackspotted/rougheye rockfish was established as 173 mt, the 2019 CDQ and ITAC of BSAI arrowtooth flounder was established as 7,656 mt, the 2019 ITAC of BSAI northern rockfish was established as 5,525 mt, the 2019 ITAC of BSAI sharks was established as 106 mt, and the 2019 ITAC of BSAI shortraker rockfish was established as 304 mt by the final 2019 and 2020 harvest specifications for groundfish of the BSAI (84 FR 9000, March 13, 2019). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs for AI Greenland turbot, AI sablefish, BS sablefish, BS ''other rockfish,'' BS/EAI blackspotted/rougheye rockfish, CAI/WAI blackspotted/rougheye rockfish, BSAI northern rockfish, BSAI sharks, BSAI shortraker rockfish, and the CDQ and ITAC for BSAI arrowtooth flounder need to be supplemented from the non-specified reserve to promote efficiency in the utilization of fishery resources in

the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish to ITACs and CDQ in the BSAI management area as follows: 25 mt to AI Greenland turbot, 37 mt to AI sablefish, 56 mt to BS sablefish, 450 mt to BS ''other rockfish,'' 11 mt to BS/EAI blackspotted/rougheye rockfish, 31 mt to CAI/WAI blackspotted/rougheye rockfish, 1,344 mt to BSAI arrowtooth flounder, 3,000 mt to BSAI northern rockfish, 19 mt to BSAI sharks, and 54 mt to BSAI shortraker rockfish. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and total allowable catches (TACs) are equal to or less than the specifications of the acceptable biological catch in the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

The harvest specification for the 2019 ITACs and TACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 169 mt for AI Greenland turbot, 2,008 mt for AI sablefish, 1,489 mt for BS sablefish, 684 mt for BS ''other rockfish,'' 75 mt for BS/EAI blackspotted/rougheye rockfish, 204 mt for CAI/WAI blackspotted/rougheye rockfish, 9,000 mt for BSAI arrowtooth flounder, 8,525 mt for BSAI northern rockfish, 125 mt for BSAI sharks, and 358 mt for BSAI shortraker rockfish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the AI Greenland turbot, AI sablefish, BS sablefish, BS ''other rockfish,'' BS/EAI blackspotted/rougheye rockfish, CAI/WAI blackspotted/rougheye rockfish, BSAI arrowtooth flounder, BSAI northern rockfish, BSAI sharks, and BSAI shortraker rockfish. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 11, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until October 3, 2019.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 18, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–20556 Filed 9–18–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 184

Monday, September 23, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS–2016–0065]

RIN 0579–AE41

Deregulation of Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations to remove the domestic pine shoot beetle (PSB) quarantine and to eliminate the restrictions that apply to the importation of PSB host material from Canada. We have prepared an analysis of regulatory options, which we are making available for public review and comment, that evaluates the effectiveness of the regulatory program in slowing the spread of the pest and reducing damages. This action would provide flexibility to the States as they manage PSB, would allow Federal resources spent on this program to be allocated elsewhere, and would remove PSB-related interstate movement and importation restrictions on PSB regulated articles.

DATES: We will consider all comments that we receive on or before November 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0065.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0065* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle (PSB, *Tomicus piniperda*) is a pest of pines in Africa, Asia, and Europe. Biologically, this species of bark beetle is considered to be a secondary pest of pine and not able to successfully attack healthy trees. PSB colonize fresh timber and dying pine trees in early spring. Larvae feed within the galleries under the bark and emerge as adults from shoots after a hard frost and move to the base of the tree to reproduce.

PSB was first detected in the United States in a Christmas tree farm in Ohio in 1992. Based on an initial finding of potentially high economic losses in 1992, the Animal and Plant Health Inspection Service (APHIS) implemented a regulatory program to regulate at-risk pine commodities, including logs with bark, Christmas trees, and nursery stock in known infested areas.

The regulations in ''Subpart G—Pine Shoot Beetle'' (7 CFR 301.50 through 301.50–10, referred to below as the regulations) restrict the interstate movement of certain regulated articles (generally wood and wood products) from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. Since the PSB program was initiated in 1992, PSB has advanced at a slow rate and the damage to native pines, plantations, and the nursery trade has been minimal. In 2015, APHIS met with the National Plant Board to reassess the relevance and need for the PSB regulatory program given the slow advancement and minimal damage of PSB and the limited resources allotted to the PSB program.

We have prepared an analysis [1] of regulatory options entitled ''Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus): Analysis of Regulatory Options'' (February 2015) to evaluate the PSB program in terms of its effectiveness and efficiency in slowing the spread and reducing losses. The analysis looked at timber losses and estimated compliance costs incurred by Christmas tree growers in quarantined areas. Given the little damage observed as a result of PSB and the amount of resources allocated to manage the minimal risks associated with PSB, we have determined it is appropriate to deregulate PSB. While the possibility exists that PSB may spread at a faster rate and enter Southern States sooner under this proposal, we anticipate that PSB will be controlled within managed timber stands in the South.

Accordingly, we are proposing to remove, in their entirety, the regulations in ''Subpart G—Pine Shoot Beetle'' in 7 CFR part 301. If adopted, references to the regulations in 7 CFR part 319 of ''Subpart G—Logs, Lumber, and Other Wood Articles'' would be obsolete. Therefore, we are proposing to remove the PSB-based restrictions on pine articles from Canada that are found in §§ 319.40–3 and 319.40–5.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, this rule is a deregulatory action under Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is proposing to amend its regulations to remove the domestic PSB quarantine and to eliminate the

[1] The analysis may be viewed on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

restrictions that apply to the importation of PSB host material from Canada. Although PSB is now found throughout the northeast and north central United States, damage to native pines and pine plantations and costs to the nursery trade have been minimal. It is now considered a minor pest that can be readily controlled locally.

Establishments that may be affected are ones that grow, handle, or move regulated pine (*Pinus* spp.) products: Bark products, Christmas trees, logs and firewood with bark attached, lumber with bark attached, nursery stock, raw pine materials for pine wreaths and garlands, and stumps. Potentially affected establishments include timber tract operations, forest product operations, logging companies, forest tree nurseries, and Christmas tree operations. The majority of these establishments are small entities.

Regulated articles from PSB quarantined areas may be moved interstate if accompanied by a certificate or limited permit. Under the proposed rule, affected establishments in the Federal PSB quarantined area would no longer incur costs of complying with certification or permitting requirements. Businesses that operate under Federal PSB compliance agreements, of which there are about 100, are the establishments most likely to be shipping regulated articles interstate. With the proposed rule, they would forgo the paperwork and recordkeeping costs of compliance. For affected entities that do not operate under compliance agreement, the costs of inspection are incurred by APHIS, unless they occur outside of normal working hours.

We estimate that an establishment with an active PSB compliance agreement spends 4 to 8 hours annually collecting data and ensuring adherence to the agreement. Based on this estimate, total annual cost savings from PSB deregulation for establishments with active compliance agreements could be between $12,480 and $59,600. In accordance with guidance on complying with Executive Order 13771, the single primary estimate of the cost savings of this proposed rule is about $36,000, the mid-point estimate annualized in perpetuity using a 7 percent discount rate.

Besides yielding cost savings for entities with compliance agreements, sales volumes for at least some businesses could increase if their sales are currently constrained because of the Federal quarantine. Restrictions ultimately borne would depend on whether States decide to enforce their own PSB quarantine programs.

Internationally, the proposed deregulation is unlikely to affect exports of pine products. In 2016, the United States exported about $243 million of pine logs and timber, of which $74 million were Christmas trees and other plants used for ornamental purposes. However, these exports are required to be treated otherwise for pine wood nematode under a systems approach and accompanied by a phytosanitary certificate as proof that the trees meet the import countries' requirements, as documented in ISPM 12.

Longer term, any delay in PSB spread attributable to the quarantine regulations would end with finalization of this proposed rule. It is possible that without the PSB program, human-assisted dispersal of PSB would have occurred more rapidly and extended to areas that are not yet infested; the impact of the proposed rule on pine populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process pine products—is indeterminate. Still, PSB has caused negligible direct damage despite having spread widely, and compliance costs that would no longer be incurred under the proposed rule are minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no reporting, recordkeeping, or third party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 301 and 319 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Subpart G—Pine Shoot Beetle [Removed and Reserved]

■ 2. Subpart G—Pine Shoot Beetle, consisting of §§ 301.50 through 301.50–10, is removed and reserved.

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.40–3 [Amended]

■ 4. Section 319.40–3 is amended by removing paragraph (a)(1)(i)(B) and redesignating paragraph (a)(1)(i)(C) as (a)(1)(i)(B).

§ 319.40–5 [Amended]

■ 5. Section 319.40–5 is amended by removing and reserving paragraph (m).

Done in Washington, DC, this 16th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20381 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Doc. No. AMS–SC–19–0049; SC19–923–1 PR]

Marketing Order Regulating the Handling of Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Washington Cherry Marketing Committee (Committee) to decrease the assessment rate established for the 2019–2020 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 23, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *dalej.novotny@usda.gov* or *GaryD.Olson@usda.gov.* Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 923, as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties of Washington. Part 923 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of sweet cherry growers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Washington sweet cherry handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable Washington sweet cherries for the 2019–2020 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Committee members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This proposed rule would decrease the assessment rate from $0.25 to $0.20 per ton of Washington sweet cherries handled for the 2019–2020 and subsequent fiscal periods. The proposed lower rate is necessary to fund the Committee's 2019–2020 fiscal period budgeted expenditures while maintaining the Committee's financial reserve fund at an amount not exceeding approximately one fiscal period's operational expenses. Based on input received from growers at an annual meeting, the 2019 crop of Washington sweet cherries is expected to be similar in volume, and of exceptional quality, compared to the 2018 crop. The Committee believes that decreasing the continuing assessment rate would allow the Committee to fully fund its 2019–2020 budgeted expenses and maintain its financial reserve within the limits established in the Order.

The Committee held a well-publicized meeting May 8, 2019, where all interested parties were encouraged to participate in the discussions. However, the Order's quorum requirement was not met, and the Committee was not able to conduct official business. The following day, the Committee conducted the vote by email and, with a vote of 15–1, recommended 2019–2020 fiscal period budgeted expenditures of $56,250 and an assessment rate of $0.20 per ton of sweet cherries handled. In comparison, last year's budgeted expenditures were $55,750. The proposed assessment rate of $0.20 is $0.05 lower than the $0.25 per ton rate currently in effect. The Committee recommended the assessment rate decrease because of a normal size crop estimate and a financial reserve fund balance that was higher than the Committee believes is responsible. At the recommended

assessment rate and budgeted expenditures, the Committee expects its financial reserve to be $55,093 at the end of the 2019–2020 fiscal period, which would be within the limits set in the Order.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include $25,000 for program management contract services provided by the Washington State Fruit Commission, $7,250 for administrative expenses, $7,000 for regulation proceedings, $5,000 for data management, $5,000 for research, $4,000 for an annual audit, and $3,000 for travel. In comparison, these major expense categories budgeted for the 2018–2019 fiscal period were $25,000, $6,950, $7,000, $5,000, $5,000, $3,800, and $3,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected sweet cherry sales, and the amount of funds available in the authorized reserve. Expected income derived from handler assessments of $40,000 (200,000 tons of sweet cherries at $0.20 per ton), plus $5 interest income and $16,245 from the reserve would be adequate to cover budgeted expenses of $56,250. Funds from the reserve (estimated to be $71,338 at the beginning of the 2019–2020 fiscal period) would be used to supply part of the Committee's 2019–2020 expenses in an effort to keep the reserve within the maximum permitted by the Order in § 923.142(a).

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,450 growers and 37 handlers of sweet cherries in the regulated production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to data from USDA Market News, the 2018 season average f.o.b. price for Washington sweet cherries was approximately $35.14 per 15-pound carton. The Committee reported that the industry shipped 3,964 tons for the season, which equals approximately 27,394,133 cartons (204,456 tons at a net weight of 15 pounds per carton). Using the number of handlers, and assuming a normal distribution, most handlers would have average annual receipts of more than $7,500,000 ($35.14 times 27,394,133 cartons equals $962,629,845 divided by 37 handlers equals $26,017,022 per handler).

In addition, based on USDA National Agricultural Statistics Service data, the weighted average grower price for the 2018 season was $1,900 per ton of sweet cherries. Based on grower price, shipment data, and the total number of Washington sweet cherry growers, and assuming a normal distribution, the average annual grower revenue is below $750,000 ($1,900 times 205,456 tons equals $390,366,400 divided by 1,450 growers equals $269,218 per grower). Thus, most growers of Washington sweet cherries may be classified as small entities, but most of their handlers may be classified as large entities.

This proposed rule would decrease the assessment rate collected from handlers for the 2019–2020 and subsequent fiscal periods from $0.25 to $0.20 per ton of Washington sweet cherries handled. The Committee recommended 2019–2020 fiscal period expenditures of $56,250 and the $0.20 per ton assessment rate with an affirmative vote of 15–1. The one dissenting voter gave no reason for their opposition. The proposed assessment rate of $0.20 is $0.05 lower than the rate for the 2018–2019 fiscal period. The Committee estimates that the industry will handle 200,000 tons of fresh, Washington sweet cherries during the 2019–2020 fiscal period. Thus, the $0.20 per ton rate should provide $40,000 in assessment income. Income derived from handler assessments, along with $5 interest income and $16,245 from the reserve, would be adequate to cover all budgeted expenses.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include $25,000 for program management contract services provided by the Washington State Fruit Commission, $7,250 for administrative expenses, $7,000 for regulation proceedings, $5,000 for data management, $5,000 for research, $4,000 for an annual audit, and $3,000 for travel. In comparison, these major expense categories budgeted for the 2018–2019 fiscal period were $25,000, $6,950, $7,000, $5,000, $5,000, $3,800, and $3,000, respectively.

The proposed lower assessment rate would cover most of the Committee's 2019–2020 fiscal period budgeted expenditures, with the balance to come from the financial reserve. Decreasing the continuing assessment rate and using some funds from the reserve would allow the Committee to fully fund budgeted expenses and bring its financial reserve to a level that is compliant with the Order.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of $0.25 per ton. However, after grower input and discussions at the May 8, 2019, meeting, the Committee projected the 2019 crop to be as good or better than the previous year. This amount of production at the current assessment level of $0.25 per ton would generate too much assessment income to fund the Committee's operations for the 2019–2020 fiscal period, but its financial reserve would not be in compliance with the Order. Based on estimated shipments, the recommended assessment rate of $0.20 per ton of sweet cherries should provide $40,000 in assessment income. The Committee determined assessment revenue would be adequate to cover most of its budgeted expenditures for the 2019–2020 fiscal period, with the balance coming from its financial reserve.

Reserve funds would be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price range for the 2019–2020 season should be approximately $1,598–$3,081 per ton of Washington sweet cherries. Therefore, the estimated assessment revenue for the 2019–2020 fiscal period as a percentage of total grower revenue would be between 0.007 and 0.013 percent.

The Committee's meetings are widely publicized throughout the Washington sweet cherry industry. All interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements would be necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Washington sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is proposed to be amended as follows:

PART 923—MARKETING ORDER REGULATING THE HANDLING OF SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 923.236 [Amended]

■ 2. Amend § 923.236 is as follows:

On and after April 1, 2019, an assessment rate of $0.20 per ton is established for the Washington Cherry Marketing Committee.

Dated: September 17, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–20451 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, 620, 621, 628 and 630

RIN 3052–AD36

Implementation of the Current Expected Credit Losses Methodology for Allowances, Related Adjustments to the Tier 1/Tier 2 Capital Rule, and Conforming Amendments

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is inviting public comment on a proposal to address changes to our capital and other regulations, including certain regulatory disclosure requirements, in response to recent changes in the U.S. generally accepted accounting principles (U.S. GAAP).

DATES: You may send us comments on or before November 22, 2019.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by email or through the FCA's website. We do not accept comments submitted by facsimile (fax), as faxes are difficult for us to process in compliance with section 508 of the Rehabilitation Act. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Acting Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our website at *http://www.fca.gov.* We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

To read comments online, go to *www.fca.gov,* click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

FOR FURTHER INFORMATION CONTACT:

Ryan Leist, Senior Accountant, Office of Regulatory Policy, (703) 883–4223, TTY (703) 883–4056; or

Jeremy R. Edelstein, Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, (703) 883–4497, TTY (703) 883–4056; or

Jennifer Cohn, Senior Counsel, Office of General Counsel, (720) 213–0440, TTY (703) 883–4056.

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I. Introduction

A. Objectives of the Proposed Rule

The objectives of the proposed rule are to:

- Ensure that the System's capital requirements, including certain regulatory disclosures, reflect the current expected credit losses methodology, which revises the accounting for credit losses under U.S. GAAP; and
- Ensure that conforming amendments to other regulations accurately reference credit losses.

B. Overview of Changes to U.S. Generally Accepted Accounting Principles

In June 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–13, Topic 326, Financial Instruments—Credit Losses,[1] which revises the accounting for credit losses under U.S. GAAP. In pertinent part, ASU No. 2016–13:

- Introduces the current expected credit losses methodology (CECL), which replaces the incurred loss methodology for financial assets measured at amortized cost;
- Introduces the term purchased credit deteriorated (PCD) assets, which replaces the term purchased credit impaired (PCI) assets;
- Modifies the treatment of credit losses on available-for-sale (AFS) debt securities; and
- Requires certain disclosures of credit quality indicators by year of origination (or vintage). The new accounting standard for credit losses will apply to all System institutions.[2]

CECL differs from the incurred loss methodology in several key respects. CECL requires System institutions to recognize lifetime expected credit losses for financial assets measured at amortized cost, not just those credit losses that have been incurred as of the reporting date. CECL also requires the incorporation of reasonable and supportable forecasts in developing an estimate of lifetime expected credit losses, while maintaining the current requirement for System institutions to consider past events and current conditions. Furthermore, the probable threshold for recognition of allowances in accordance with the incurred loss methodology is removed under CECL. Estimating expected credit losses over the life of an asset under CECL, including consideration of reasonable and supportable forecasts, results in earlier recognition of credit losses than under the existing incurred loss methodology.

In addition, CECL replaces multiple impairment approaches in existing U.S. GAAP. CECL allowances will cover a broader range of financial assets than allowance for loan losses (ALL) under the incurred loss methodology. Under the incurred loss methodology, in general, ALL covers credit losses on loans held for investment and lease financing receivables, with additional allowances for certain other extensions of credit and allowances for credit losses on certain off-balance sheet credit exposures (with the latter allowances presented as a liability).[3] These exposures will be within the scope of CECL. In addition, CECL covers credit losses on held-to-maturity (HTM) debt securities.

As mentioned above, ASU No. 2016–13 also introduces PCD assets as a replacement for PCI assets. The PCD asset definition covers a broader range of assets than the PCI asset definition. CECL requires System institutions to estimate and record credit loss allowances for a PCD asset at the time of purchase. The credit loss allowance is then added to the purchase price to determine the amortized cost basis of the asset for financial reporting purposes. Post-acquisition increases in credit loss allowances on PCD assets will be established through a charge to earnings. This is different from the current treatment of PCI assets, for which System institutions are not permitted to estimate and recognize credit loss allowances at the time of purchase. Rather, in general, credit loss allowances for PCI assets are estimated after the purchase only if there is deterioration in the expected cash flows from the assets.[4]

ASU No. 2016–13 also introduces new requirements for Available-For-Sale (AFS) debt securities. The new accounting standard requires that a System institution recognize credit losses on individual AFS debt securities through credit loss allowances, rather than through direct write-downs, as is currently required under U.S. GAAP. AFS debt securities will continue to be measured at fair value, with changes in fair value not related to credit losses recognized in other comprehensive income. Credit loss allowances on an AFS debt security are limited to the amount by which the security's fair value is less than its amortized cost.

Upon adoption of CECL, a System institution will record a one-time adjustment to its credit loss allowances as of the beginning of its fiscal year of adoption equal to the difference, if any, between the amount of credit loss allowances required under the incurred loss methodology and the amount of credit loss allowances required under CECL. Except for PCD assets, the adjustment to credit loss allowances would be recognized with offsetting entries to deferred tax assets (DTAs), if appropriate, and to the fiscal year's beginning retained earnings.

The effective date of ASU No. 2016–13 varies for different banking organizations. For banking organizations that are public business entities (PBE) but not SEC filers (as defined in U.S. GAAP),[5] ASU No. 2016–13 will become effective for the first fiscal year beginning after December 15, 2020, including interim periods within that fiscal year. The Federal Farm Credit Banks Funding Corporation (Funding Corporation) meets the definition of a

[1] ASU No. 2016–13 introduces ASC Topic 326, which covers measurement of credit losses on financial instruments and includes three subtopics: (i) Subtopic 10: Financial Instruments—Credit Losses—Overall; (ii) Subtopic 20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

[2] FCA regulation § 628.2 defines System institution, for capital rule purposes, as a System bank, an association, Farm Credit Leasing Services Corporation, and any other FCA-chartered institution that we determine should be subject to our capital rules. FCA issued an Informational Memorandum on September 1, 2016, New Accounting Standard on Financial Instruments—Credit Losses, which provided initial information on CECL.

[3] ''Other extensions of credit'' includes trade and reinsurance receivables, and receivables that relate to repurchase agreements and securities lending agreements. ''Off-balance sheet credit exposures'' includes off-balance sheet credit exposures not accounted for as insurance, such as loan commitments, standby letters of credit, and financial guarantees. We note that credit losses for off-balance sheet credit exposures that are unconditionally cancellable by the issuer are not recognized under CECL.

[4] The System currently holds limited PCI assets, which have generally been acquired through business combinations. We do not believe the amount of PCD assets in the System after the adoption of CECL will be materially different.

[5] A public business entity (PBE) that is not an SEC filer includes: (1) An entity that has issued securities that are traded, listed, or quoted on an over-the-counter market, or (2) an entity that has issued one or more securities that are not subject to contractual restrictions on transfer and is required by law, contract, or regulation to prepare U.S. GAAP financial statements (including footnotes) and make them publicly available periodically. For further information on the definition of a PBE, refer to ASU No. 2013–12, Definition of a Public Business Entity, issued in December 2013.

PBE,[6] and it is our understanding that all System institutions will implement the new standard for purposes of System-wide combined financial statements for the quarter ending March 31, 2021.

C. Regulatory Capital

Changes necessitated by CECL to a System institution's retained earnings, DTAs, and allowances will affect its regulatory capital ratios.[7] Specifically, retained earnings are a key component of a System institution's common equity tier 1 (CET1) capital. An increase in a System institution's allowances, including those estimated under CECL, generally will reduce the institution's earnings or retained earnings, and therefore its CET1 capital.[8]

Depending on the nature of the difference, DTAs arising from temporary differences (temporary difference DTAs) are included in a System's institution's risk-weighted assets or are deducted from CET1 capital.[9] Increases in allowances generally give rise to increases in temporary difference DTAs that will partially offset the reduction in earnings or retained earnings.[10] Under § 628.20(d)(3), the ALL is included in a System institution's tier 2 capital up to 1.25 percent of its standardized total risk-weighted assets not including any amount of the ALL.[11]

II. Description of the Proposed Rule

To address the forthcoming implementation of changes to U.S. GAAP resulting from the FASB's issuance of ASU No. 2016–13 and to improve consistency between our capital rules and U.S. GAAP, we propose to amend our capital rules to identify which credit loss allowances under the new accounting standard are eligible for inclusion in a System institution's regulatory capital.[12] In particular, FCA is proposing to add adjusted allowances for credit losses (AACL) as a newly defined term in the capital rules. AACL would include credit loss allowances related to financial assets, except for allowances for PCD assets and AFS debt securities.[13] AACL would be eligible for inclusion in a System institution's tier 2 capital subject to the current limit for including ALL in tier 2 capital under the capital rules.

The proposal also would provide a separate capital treatment for allowances associated with AFS debt securities and PCD assets that would apply to System institutions upon adoption of ASU 2016–13; revise regulatory disclosure requirements that would apply to System banks following their adoption of CECL;[14] and make conforming amendments to the FCA's other regulations that refer to credit loss allowances to reflect the implementation of ASU No. 2016–13.

Our capital rules are similar to the standardized approach capital rules that the Federal banking regulatory agencies (FBRAs)[15] adopted for the banking organizations they regulate, while taking into account the cooperative structure and the organization of the System. The FBRAs published a CECL rule in February 2019.[16] Our proposal is very similar to the FBRAs' rule.[17]

A. Proposed Revisions to the Capital Rules To Reflect the Change in U.S. GAAP

1. Introduction of Adjusted Allowances for Credit Losses as a Newly Defined Term

FCA is proposing to revise the capital rules to reflect the revised accounting standard for credit losses under U.S. GAAP as it relates to System institutions' calculation of regulatory capital ratios. Under the proposal, the new capital term AACL, rather than ALL, would apply to all System institutions. Consistent with the treatment of ALL under FCA's capital rules, amounts of AACL would be eligible for inclusion in an institution's tier 2 capital up to 1.25 percent of the institution's standardized total risk-weighted assets not including any amount of the AACL.

CECL allowances cover a broader range of financial assets than ALL under the incurred loss methodology. Under the capital rules, ALL includes valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans or other extensions of credit as determined in accordance with U.S. GAAP. Under CECL, credit loss allowances represent an accounting valuation account, measured as the difference between the financial assets' amortized cost basis and the amount expected to be collected on the financial assets (*i.e.,* lifetime credit losses). Thus, AACL would include allowances for expected credit losses on HTM debt securities and lessors' net investments in leases that have been established to reduce these assets to amounts expected to be collected, as determined in accordance with U.S. GAAP. AACL also would include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance, as determined in accordance with U.S. GAAP. As described below, however, credit loss allowances related to AFS debt securities and PCD assets would not be included in the definition of AACL.

2. Definition of Carrying Value

FCA is proposing to revise the regulatory definition of carrying value under the capital rules to provide that, for all assets other than AFS debt securities and PCD assets, the carrying value is not reduced by any associated credit loss allowance.

i. Available-for-Sale Debt Securities

Current accounting standards require a System institution to make an individual assessment of each of its AFS

[6] The Funding Corporation is the fiscal agent and disclosure agent for the System. The Funding Corporation is responsible for issuing and marketing debt securities to finance the System's loans, leases, and operations and for preparing and producing the System's financial results.

[7] These capital ratios are specified in FCA regulation § 628.10.

[8] However, allowances recognized on PCD assets upon adoption of CECL and upon later purchases of PCD assets generally would not reduce the System institution's earnings, retained earnings, or CET1 capital.

[9] DTAs arising from temporary differences in relation to net operating loss carrybacks are risk-weighted at 100 percent under § 628.32(l)(3). DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances and net of deferred tax liabilities in accordance with § 628.22(e), are deducted from CET1 capital under § 628.22(a)(3). All other DTAs are risk-weighted at 100 percent under § 628.32(l)(5). DTAs are immaterial at most System institutions.

[10] See Accounting Standards Codification Topic 740, ''Income Taxes.''

[11] Under § 628.2, any amount of ALL greater than the 1.25 percent limit is deducted from standardized total risk-weighted assets.

[12] Note that § 621.3 requires institutions to prepare financial statements in accordance with GAAP, except as otherwise directed by statutory and regulatory requirements.

[13] This exclusion of credit loss allowances on PCD assets and AFS debt securities is what differentiates AACL from the term allowance for credit losses (ACL), which is used by the FASB in ASU 2016–13 and which applies to both financial assets and AFS debt securities. Consistent with the proposal and as described in the following sections, the AACL definition includes only those allowances that have been charged against earnings or retained earnings.

[14] Section 628.63 requires System banks to disclose items such as capital structure, capital adequacy, credit risk, and credit risk mitigation.

[15] The FBRAs are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[16] 84 FR 4222 (February 14, 2019).

[17] FCA staff met with System representatives during the development of this rule to seek their input on certain issues. The questions discussed were similar to the questions asked in the preamble to the FBRA's proposed CECL rule. (83 FR 22312, May 14, 2018). We considered this input in developing this proposal.

debt securities and take a direct write-down for credit losses when such a security is other-than-temporarily impaired. The amount of the write-down is charged against earnings, which reduces CET1 capital and also results in a reduction in the same amount of the carrying value of the AFS debt security. ASU No. 2016–13 revises the accounting for credit impairment of AFS debt securities by requiring System institutions to determine whether a decline in fair value below an AFS debt security's amortized cost resulted from a credit loss, and to record any such credit impairment through earnings with a corresponding allowance. Similar to the current regulatory treatment of credit-related losses for other-than-temporary impairment, under the proposal, all credit losses recognized on AFS debt securities would flow through to CET1 capital and reduce the carrying value of the AFS debt security. Since the carrying value of an AFS debt security is its fair value, which would reflect any credit impairment, credit loss allowances for AFS debt securities required under the new accounting standard would not be eligible for inclusion in a System institution's tier 2 capital.

ii. Purchased Credit Deteriorated Assets

Under the new accounting standard, PCD assets are acquired individual financial assets (or acquired groups of financial assets with shared risk characteristics) that, as of the date of acquisition and as determined by an acquirer's assessment, have experienced a more-than-insignificant deterioration in credit quality since origination. The new accounting standard will require a System institution to estimate expected credit losses that are embedded in the purchase price of a PCD asset and recognize these amounts as an allowance as of the date of acquisition. As such, the initial allowance amount for a PCD asset recorded on a System institution's balance sheet will not be established through a charge to earnings. Post-acquisition increases in allowances for PCD assets will be established through a charge against earnings.

Including in tier 2 capital allowances that have not been charged against earnings would diminish the quality of regulatory capital. Accordingly, FCA is proposing to maintain the requirement that valuation allowances be charged against earnings in order to be eligible for inclusion in tier 2 capital. FCA is also clarifying that valuation allowances that are charged to retained earnings in accordance with U.S. GAAP (*i.e.,* the allowances required at CECL adoption) are eligible for inclusion in tier 2 capital.

As in the FBRAs' final rule, FCA is not proposing to allow System institutions to bifurcate PCD allowances to include post-acquisition allowances in the definition of AACL; we are concerned that a bifurcated approach could create undue complexity and burden for System institutions when determining the amount of credit loss allowances for PCD assets eligible for inclusion in tier 2 capital. In addition, System institutions have very little, if any, allowances for PCI assets and, as discussed above, this will not change with the change to PCD assets. Therefore, the proposal excludes all PCD allowances from being included in tier 2 capital.[18] The proposal also revises the definition of carrying value such that for PCD assets the carrying value is calculated net of allowances. This treatment of PCD assets would, in effect, reduce a System institution's standardized total risk-weighted assets, similar to the proposed treatment for credit loss allowances for AFS debt securities.

3. Additional Considerations

As in the FBRAs' final rule, FCA is not proposing to change the limit of 1.25 percent of risk-weighted assets governing the amount of AACL eligible for inclusion in tier 2 capital. Should this limit be finalized as proposed, FCA intends to monitor the effects of this limit on regulatory capital and System institution lending practices. This ongoing monitoring will include the review of data, including data provided by System institutions, and will assist FCA in determining whether a further change to the capital rules' treatment of AACL might be warranted. To the extent FCA determines that further revisions to the capital rules are necessary, we would seek comment through a separate proposal.

In addition, unlike the FBRAs, FCA is not proposing a phase-in of the day-one effects of CECL on regulatory capital ratios. The FBRAs included an optional three-year transition period for banking organizations to reduce the potential day-one adverse effects that CECL may have on a banking organization's regulatory capital ratios. The FBRAs included this transition period because of concerns that some banking organizations might face difficulties in capital planning because of uncertainty about the economic environment at the time of CECL adoption.[19]

The FBRAs will use a banking organization's regulatory capital ratios, as adjusted by the transition provision, to determine whether the organization is in compliance with its regulatory capital requirements (including capital buffer and prompt corrective action (PCA) requirements). However, the FBRAs will continue to examine banking organizations' credit loss estimates and allowance balances through the supervisory process regardless of whether they have elected to use the transition provision. In addition, the FBRAs may examine whether banking organizations will have adequate amounts of capital at the expiration of the transition provision period.[20]

We are not proposing a transition period for the following reasons.

First, a transition provision appears to be unnecessary for any System institution because, even without a transition period, they are all expected to be sufficiently capitalized to absorb the day one impact of CECL for the purpose of complying with regulatory capital requirements. In particular, if the allowances as estimated under CECL increase, CET1 capital (including retained earnings) will decrease and tier 2 capital will increase;[21] we believe total capital will be largely unchanged at the majority of System institutions. Even though a transition period like the FBRAs adopted would not affect the FCA's supervisory oversight, we do not anticipate the impacts of CECL prompting any increase in supervisory concern or response. Moreover, the capital ratios of all System institutions—CET1; Tier 1; Total Capital; and Tier 1 Leverage—are expected to remain above the regulatory minimums and buffers after the implementation of CECL, even without a transition period. An institution's ability to provide loans and related services without a transition provision would be hindered only if the

[18] This proposal excludes both initial PCD allowances and post-acquisition PCD allowances from being included in tier 2 capital. As noted above, the initial allowance for a PCD asset will not be established through a charge to earnings (the allowance is estimated on the date of acquisition). However, post-acquisition increases in allowances for PCD assets are established through a charge against earnings.

[19] CECL requires consideration of current and future expected economic conditions to estimate allowances. To an extent, these conditions will not be known until closer to an institution's CECL adoption date.

[20] 84 FR 4229 (February 14, 2019).

[21] As of March 31, 2019, the combined System-wide allowance for loan losses and reserve for losses on unfunded commitments as a percentage of risk weighted assets was 0.57 percent. As mentioned above, under revised § 628.20(d)(3), the AACL would be included in a System institution's tier 2 capital up to 1.25 percent of its standardized total risk-weighted assets not including any amount of the AACL.

institution's capital measures would fall below its regulatory capital requirements without the transition provision.[22]

Second, we believe either an optional or a mandatory transition period would lead to unnecessary complexity and operational burden that is not warranted in light of our belief that a transition period is not needed. An optional transition period, like that adopted by the FBRAs, could be difficult to implement and maintain for System institutions in at least two districts that make use of common standardized applications for computing and reporting regulatory capital. A transition period utilized by some institutions in such districts but not by others would appear to complicate supporting the common reporting platforms for those institutions. In addition, allowing an optional transition period would create a lack of comparability among System institutions' capital levels.

A mandatory transition period might not be wanted by institutions that already have plans to absorb the day-one impact of CECL and have incurred sunk costs in making changes to processes for calculating and reporting regulatory capital ratios for FCA Uniform Reports of Financial Condition and Performance (Call Reports) and shareholder reporting.

Closer to the adoption of CECL, and in the unlikely event that its day-one impact threatens regulatory capital compliance or patronage practices, FCA may consider other options to reduce unanticipated impacts of the accounting change. The type of action would depend on the materiality of CECL's impact and how widespread the issue is throughout the System.

We request comment on the following issues relative to a transition period:

1. We invite comment on whether FCA should adopt a transition period for the day-one impact CECL may have on an institution's regulatory capital ratios. If you believe we should adopt a transition period, please explain whether you believe it should be mandatory or optional, and please address the reasons we have discussed for not proposing a transition period. Please provide analysis to support your position.

2. We invite comment on alternatives to a transition period that might accommodate institutions in their implementation of the CECL requirements. Please explain what these alternatives are and why they would be necessary. Please explain why our reasons for not proposing a transition period would not apply to these alternatives. Please provide analysis to support your position.

B. Disclosures and Regulatory Reporting

Under the proposed rule, System banks would be required to update their disclosures required under § 628.63 to reflect the adoption of CECL. For example, System banks would be required to disclose AACL instead of ALL after adoption.

In addition, to reflect changes in U.S. GAAP, FCA anticipates revising the Call Reports as part of its annual review process. These revisions would specify the affected line items in the capital schedules and the newly defined term AACL. In addition, FCA intends to update instructions for all affected Call Report schedule references to ALL. If we adopt this rule as proposed, we expect to make these changes for the March 31, 2021 reporting period.

C. Conforming Changes

A number of existing FCA regulations outside of Part 628 refer to ALL or to ''loan loss.'' ASU No. 2016–13 removes impairment approaches and related terminology, including replacing the term ALL with allowance for credit losses (ACL). The proposed rule would replace the references to ALL or ''loan loss'' in our regulations with references to ACL or ''credit loss,'' as appropriate. In addition, several regulations that refer to ''allowance for losses'' more appropriately should refer to ACL.

Both the part 620 regulations governing the contents of the annual report to shareholders and the part 630 regulations governing the contents of the annual report to investors require that the discussion and analysis of risk exposures analyze the allowance for loan losses. The proposal would amend the analysis requirement for consistency with ASU No. 2016–13, which requires an analysis of the allowance for credit losses by year of origination (vintage year) and the allowance be supported by reasonable and supportable forecasts. The proposal would also replace terms in the requirement that references ''loan loss'' with references to ''credit loss,'' as appropriate.

In the capital rules codified at part 628, as well as in other regulations that refer to the capital rules, the proposal would replace references to ALL with AACL. In the capital disclosures at § 628.63, references to ''probable loan losses'' and ''loan losses'' would be updated with ACL or AACL, as applicable.

The proposed rule would make conforming changes in regulations in the following parts:

- Part 611—Organization
- Part 615—Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations
- Part 620—Disclosure to Shareholders
- Part 621—Accounting and Reporting Requirements
- Part 628—Capital Adequacy of System Institutions
- Part 630—Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System.

D. Supervisory Guidance on the ACL

If this rule is adopted, we expect to issue supervisory guidance on the ACL. Until that time, many concepts, processes, and practices detailed in existing supervisory guidance on the ALL would continue to remain relevant under CECL. Relevant guidance includes, but is not limited to, information related to management's responsibility for the allowance estimation process, the board of directors' responsibility for overseeing management's process, and the need for institutions to appropriately support and document their allowance estimates.[23] Until new guidance is issued, institutions should consider the relevant sections of existing ALL guidance in their implementation of the new accounting standard.

E. Additional Request for Comment

FCA seeks comment on all aspects of the proposal. Comments are requested about the potential impact, if any, of the proposal in ensuring the safety and soundness of individual System institutions as well as on the stability of the Farm Credit System.

III. Timeframe for Implementation

We intend the effective date of the final rule to be January 1, 2021. As mentioned above, the effective date of ASU No. 2016–13 will become effective for the Funding Corporation for the first fiscal year beginning after December 15, 2020, including interim periods within that fiscal year, and System institutions will implement the new standard for purposes of System-wide combined financial statements for the Call Report quarter ending March 21, 2021.

[22] Unlike the banking organizations regulated by the FBRAs, System institutions have no PCA requirements and therefore have no concerns about triggering such requirements.

[23] Existing supervisory guidance includes: FCA Bookletter 49, Adequacy of Farm Credit System Institutions' Allowance for Loan Losses and Risk Funds, April 26, 2004; FCA Informational Memorandum, Computer-Based Model Validation Expectations, June 17, 2002; FCA Informational Memorandum, Allowance for Loan Losses, June 30, 2009; and FCA Exam Manual, Allowance for Loan Losses, November 17, 2015.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

Lists of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 628

Accounting, Agriculture, Banks, banking, Capital, Government securities, Investments, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, the Farm Credit Administration proposes to amend parts 611, 615, 620, 621, 628, and 630 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.3, 7.6–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2154a, 2183, 2184, 2203, 2208, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279a–3, 2279b–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638 (12 U.S.C. 2071 note and § 2202 note).

§ 611.515 [Amended]

■ 2. Amend § 611.515 paragraph (b)(6)(ii)(E) by removing the word ''loan'' and adding in its place the word ''credit''.

§ 611.1122 [Amended]

■ 3. Amend § 611.1122 by:

■ a. Removing in paragraph (e)(6)(iii), the word ''loan'' and adding in its place the word ''credit''; and

■ b. Removing in paragraph (e)(10), the words ''loan losses'' and adding in its place the words ''credit losses'' both places it appears.

§ 611.1130 [Amended]

■ 4. Amend § 611.1130 paragraph (b)(4)(i) by removing the words ''allowance for losses'' and adding in its place the words ''allowance for credit losses''.

§ 611.1223 [Amended]

■ 5. Amend § 611.1223 paragraph (c)(23)(ii) by removing the words ''allowance for losses'' and adding in its place the words ''allowance for credit losses''.

§ 611.1250 [Amended]

■ 6. Amend § 611.1250 paragraph (b)(5)(i)(B) by removing the words ''loan'' and adding in its place the words ''credit''.

§ 611.1255 [Amended]

■ 7. Amend § 611.1255 paragraph (b)(5)(i)(B) by removing the words ''general allowance for losses'' and adding in its place the words ''general allowance for credit losses''.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 8. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608 (12 U.S.C. 2154 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 615.5050 [Amended]

■ 9. Amend § 615.5050 by:

■ a. Removing in paragraph (c)(1), the words ''allowance for loan losses'' and adding in its place the words ''allowance for credit losses''; and

■ b. Removing in paragraphs (c)(2) through (4) the words ''allowance for losses'' and adding in its place the words ''allowance for credit losses''.

§ 615.5132 [Amended]

■ 10. Amend § 615.5132 paragraph (a) by removing the words ''loan loss adjustments'' and adding in its place the words ''credit loss adjustments''.

§ 615.5140 [Amended]

■ 11. Amend § 615.5140 paragraph (b)(4)(ii) by removing the words ''loan loss'' and adding in its place the words ''credit loss''.

§ 615.5200 [Amended]

■ 12. Amend § 615.5200 paragraph (c)(4) by adding the word ''credit'' before ''losses''.

§ 615.5201 [Amended]

■ 13. Amend § 615.5201 by removing the words ''allowance for loan losses'' and adding in its place the words ''adjusted allowance for credit losses'' in the definition of ''Risk-adjusted asset base''.

§ 615.5351 [Amended]

■ 14. Amend § 615.5351 paragraph (d) by adding the word ''credit'' before ''loss.''

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 15. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254).

§ 620.5 [Amended]

■ 16. Amend § 620.5 by:

■ a. Removing in paragraph (f)(1)(i)(D), the words ''Allowance for losses'' and adding in its place the words ''Allowance for credit losses'';

■ b. Removing in paragraph (f)(1)(ii)(B), the words ''Provision for loan losses'' and adding in its place the words ''Provision for credit losses'';

■ c. Removing in paragraph (f)(1)(iii)(F), the words ''Allowance for loan losses-to-loans'' and adding in its place the words ''Allowance for credit losses-to-loans'';

■ d. Revising paragraph (g)(1)(iv)(B);

■ e. Removing in paragraph (g)(1)(iv)(E), the words ''allowance for losses'' and adding in its place the words ''allowance for credit losses.''

The revision reads as follows:

* * *

(g) * * *

(1) * * *

(iv) * * *

(B) An analysis of the allowance for credit losses by year of origination (vintage year). The number of years analyzed must be consistent with vintage year disclosures required by generally accepted accounting principles. The analysis must include the ratios of the allowance for credit losses to loans and net chargeoffs to average loans and a discussion of the adequacy of the allowance for credit losses given reasonable and supportable forecasts;

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

■ 17. The authority citation for part 621 is revised to read as follows:

Authority: Secs. 5.17, 5.19, 5.22A, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2257a, 2279aa–11).

§ 621.5 [Amended]

■ 18. Amend § 621.5 by:

■ a. Removing in the heading, the word ''loan'' and adding in its place the word ''credit''; and

■ b. Removing in paragraphs (a) and (b), the word ''loan'' and adding in its place the word ''credit''.

§ 621.8 [Amended]

■ 19. Amend § 621.8 paragraph (c)(2) by removing the word ''loan'' and adding in its place the word ''credit''.

PART 628—CAPITAL ADEQUACY OF SYSTEM INSTITUTIONS

■ 20. The authority citation for part 628 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608 (12 U.S.C. 1254 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 628.2 [Amended]

■ 21. Amend § 628.2 by:

■ a. Adding in alphabetical order a definition for ''Adjusted allowances for credit loss (AACL)'';

■ b. Removing the definition of ''Allowances for loan losses (ALL)''; and

■ c. Adding in the definition ''Carrying value'' a new last sentence;

■ d. Revising ''Standardized total risk-weighted assets'' definitions second paragraph (2).

The additions and revision reads as follows:

§ 628.2 Definitions

* * * * *

Adjusted allowances for credit losses (AACL) means valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses includes allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses excludes allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

* * * * *

Carrying value * * * For all assets other than available-for-sale debt securities or purchased credit-deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

* * * * *

Standardized total risk-weighted assets means:

* * *

(2) Any amount of the System institution's adjusted allowance for credit losses that is not included in tier 2 capital.

* * * * *

§ 628.20 [Amended]

■ 22. Amend § 628.20 paragraph (d)(3) by removing the word ''ALL'' and adding in its place the word ''AACL'' each place it appears.

§ 628.22 [Amended]

■ 23. Amend § 628.22 paragraph (c) by removing the word ''ALL'' in footnote 6 and adding in its place the word ''AACL''.

§ 628.63 [Amended]

■ 24. Amend Table 5 to Section 628.63—Credit Risk: General Disclosures by:

■ a. Removing in paragraphs (a)(5), (e)(5), and (g), the words ''allowance for loan losses'' and adding in its place the words ''adjusted allowance for credit losses''; and

■ b. Removing in footnote 6, the words ''probable loan losses'' and adding in its place the words ''credit losses''.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

■ 25. The authority citation for part 630 is revised to read as follows:

Authority: Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254).

§ 630.20 [Amended]

■ 26. Amend § 630.20 by:

■ a. Removing in paragraph (f)(1)(ii), the words ''Allowance for losses'' and adding in its place the words ''Allowance for credit losses'';

■ b. Removing in paragraph (f)(2)(iii), the words ''Provision for loan losses'' and adding in its place the words ''Provision for credit losses'';

■ c. Removing in paragraph (f)(3)(v), the words ''Allowance for losses'' and adding in its place the words ''Allowance for credit losses'' and

■ d. Revising paragraph (g)(1)(ii)(B).

The revision reads as follows:

* * *

(B) An analysis of the allowance for credit losses by year of origination (vintage year). The number of years analyzed must be consistent with vintage year disclosures required by generally accepted accounting principles. The analysis must include the ratios of the allowance for loan credit losses to loans and net chargeoffs to average loans and a discussion of the adequacy of the allowance for credit losses given reasonable and supportable forecasts.

* * * * *

Appendix A to Part 630—Supplemental Information Disclosure Guidelines [Amended]

■ 27. Amend Appendix A to Part 630 by removing the words ''loan losses'' and adding in its place the words ''credit losses'' in Table B wherever they appear.

Dated: August 14, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–19916 Filed 9–20–19; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA15

Jurisdiction—Nonemployee Status of University and College Students Working in Connection With Their Studies

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In order to more effectively administer the National Labor Relations Act (Act or NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes a regulation establishing that students who perform any services for compensation, including, but not limited to, teaching or research, at a private college or university in connection with their studies are not ''employees'' within the meaning of Section 2(3) of the Act. The Board believes that this proposed standard is consistent with the purposes and policies of the Act, which contemplates jurisdiction over economic relationships, not those that are primarily educational in nature. This rulemaking is intended to bring stability to an area of federal labor law in which the Board, through adjudication, has reversed its approach three times since 2000.

DATES: Comments regarding this proposed rule must be received by the Board on or before November 22, 2019. Comments replying to comments submitted during the initial comment period must be received by the Board on or before November 29, 2019. Reply comments should be limited to replying to comments previously filed by other parties. No late comments will be accepted.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.* Follow the instructions for submitting comments.

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with regulations.gov. If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is proposing a jurisdictional rule excluding undergraduate and graduate students who perform services for some form of financial compensation at a private college or university in connection with their studies from coverage as employees under Section 2(3) of the Act. This proposed rule will overrule extant precedent and return to the state of law as it existed from shortly after the Board first asserted jurisdiction over private colleges and universities in the early 1970s to 2000 and, with brief exceptions, for most of the time since then.

I. Background

Under Section 2(3) of the Act, ''the term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter [of the Act] explicitly states otherwise . . . .'' This statutory definition of ''employee'' neither expressly includes nor excludes students who perform services at a private college or university in connection with their studies. Consequently, the Board is tasked with addressing the jurisdictional implications of asserting or denying statutory employee status for these students in light of the underlying purposes of the Act. The Supreme Court has made clear that ''when reviewing the *Board's* [as opposed to a lower court's] interpretation of the term 'employee' as it is used in the Act, we have repeatedly said that '[s]ince the task of defining the term employee is one that has been assigned primarily to the agency created by Congress to administer the Act, . .the Board's construction of that term is entitled to considerable deference . . . .' '' *NLRB* v. *Town & Country Electric,* 516 U.S. 85, 94 (1995) (emphasis in original) (quoting *Sure-Tan, Inc.* v. *NLRB,* 467 U.S. 883, 891 (1984) (internal quotation marks omitted) (citations omitted)). Thus, the Supreme Court ''will uphold any interpretation [of 'employee'] that is reasonably defensible.'' *Sure-Tan,* supra at 891 (citations omitted).

In Section 1 of the Act, Congress found that the ''strikes and other forms of industrial strife or unrest'' that preceded the Act were caused by the ''inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership . . . .'' In order to eliminate the burden on interstate commerce caused by this industrial unrest, Congress extended to employees the right ''to organize and bargain collectively'' with their employer, encouraging the ''friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions . . . .'' Id.[1] In

[1] 1 Leg. Hist. 318 (NLRA 1935). See also *American Ship Building Co.* v. *NLRB,* 380 U.S. 300, 316 (1965) (stating that a purpose of the Act is ''to

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applying this ''central policy of the Act,'' the Board has emphasized that ''[t]he vision of a fundamentally economic relationship between employers and employees is inescapable.'' *WBAI Pacifica Foundation,* 328 NLRB 1273, 1275 (1999). The Supreme Court has similarly observed that ''[t]he Act was intended to accommodate the type of management-employee relations that prevail in the pyramidal hierarchies of private industry,''[2] and that, accordingly, ''principles developed for use in the industrial setting cannot be 'imposed blindly on the academic world.' ''[3]

The Board first asserted jurisdiction over private colleges and universities in *Cornell Univ.,* 183 NLRB 329 (1970).[4] Shortly thereafter, in *Adelphi University,* 195 NLRB 639 (1972), the Board held that graduate student assistants are primarily students and should be excluded from a bargaining unit of regular faculty. The graduate students were working toward their advanced academic degrees, and the Board noted that ''their employment depends entirely on their status as such.'' Id. at 640. Further, the Board emphasized that graduate student assistants ''are guided, instructed, assisted, and corrected in the performance of their assistantship duties by the regular faculty members to whom they are assigned.'' Id. In *The Leland Stanford Junior University,* 214 NLRB 621, 623 (1974), the Board went further, holding that graduate student research assistants ''are not employees within the meaning of Section 2(3) of the Act.'' The Board found that the research assistants were not statutory employees because, like the graduate assistants in *Adelphi University,* supra, they were ''primarily students.'' Id. In support of this conclusion, the Board cited the following: (1) The research assistants were graduate students enrolled in the Stanford physics department as Ph.D. candidates; (2) they were required to perform research to obtain a degree; (3) they received academic credit for their research work; and (4) while they received a stipend from Stanford, funded by external sources, the amount was not dependent on the nature or intrinsic value of the services performed or the skill or function of the recipient, but instead was determined by the goal of providing the graduate students with financial support. Id. at 621–623. The Board distinguished the graduate student research assistants from employee ''research associates'' who were ''not simultaneously students,'' having already completed their graduate degrees. Id. at 623.

For over 25 years, the Board adhered to the *Leland Stanford* principle.[5] Then, in *New York University,* 332 NLRB 1205 (2000) (''*NYU*''), the Board reversed course and held for the first time that certain university graduate student assistants were statutory employees. The Board reviewed the statutory language of Section 2(3) and applied the common-law agency doctrine of the conventional master-servant relationship, which establishes that such a ''relationship exists when a servant performs services for another, under the other's control or right of control, and in return for payment.'' Id. at 1206 (citations omitted). The Board concluded that ''ample evidence exists to find that graduate assistants plainly and literally fall within the meaning of 'employee' as defined in Section 2(3)'' and by the common law. Id. This interpretation was based on the breadth of the statutory language, the lack of any statutory exclusion for graduate student assistants, and the ''uncontradicted and salient facts'' establishing that the assistants in that case performed services under the control and direction of the university for which they were compensated. Id. The *NYU* Board also relied on *Boston Medical Center,* supra, to support its policy determination that collective bargaining was feasible in the university context. Id. However, citing *Leland Stanford,* supra, the Board concluded that certain externally-funded graduate and research student assistants did not ''perform a service'' for their university and therefore were not statutory employees. Id. at 1209 fn. 10.

Four years later, the Board in *Brown University,* 342 NLRB 483 (2004), reconsidered and overruled *NYU,*[6] holding that graduate student teaching assistants, research assistants, and proctors in the petitioned-for bargaining unit were not statutory employees. The Board reasserted the ''principle . . . that graduate student assistants are primarily students and not statutory employees.'' Id. (citing *Leland Stanford,* supra). Consistent with that principle, the Board found that ''graduate student assistants, who perform services at a university in connection with their studies, have a predominately academic, rather than economic, relationship with their school'' and therefore ''[are] not employees within the intendment of the Act.'' Id. In support of this conclusion, the Board cited the following: (1) The petitioned-for individuals were students; (2) their ability to serve as teaching assistants, research assistants, or proctors, and receipt of a stipend and tuition remission for doing so, depended on continued enrollment as a student; (3) their principal time commitment at Brown University was focused on obtaining a degree and, thus, being a student; and (4) the act of serving as a teaching assistant, research assistant, or proctor was part and parcel of the core elements of the Ph.D. degree, teaching and research. Id. at 488, 492.

In addition, as a policy matter, the Board determined that collective bargaining ''would unduly infringe upon traditional academic freedoms.'' *Brown University,* supra at 490. Specifically, the Board concluded that ''[i]mposing collective bargaining [between graduate student assistants and private universities] would have a deleterious impact on overall educational decisions . . . includ[ing] broad academic issues involving class size, time, length, and location, as well as issues over graduate assistants' duties, hours, and stipends.'' Id. The Board also found that the collective-bargaining obligation ''would intrude upon decisions over who, what, and where to teach or research,'' all of which

redress the perceived imbalance of economic power between labor and management''); 1 Leg. Hist. 15 (NLRA 1935) (remarks of Sen. Wagner, 78 Cong. Rec. 3443 (Mar. 1, 1934)).

[2] *NLRB* v. *Yeshiva University,* 444 U.S. 672, 680 (citing *Adelphi University,* 195 NLRB 639, 648 (1972)).

[3] Id. at 681 (quoting *Syracuse University,* 204 NLRB 641, 643 (1973)).

[4] Subsequent to issuance of the decision in *Cornell,* the Board engaged in notice and comment rulemaking to establish the discretionary minimum jurisdictional standard for colleges and universities. Based on comments in response to a notice of proposed rulemaking, 35 FR 11270, the Board issued a final rule, codified as 29 CFR 103.1, setting a gross annual revenue of $1 million as the minimum standard. 35 FR 18370.

[5] In *St. Clare's Hospital,* 229 NLRB 1000 (1977), and *Cedars-Sinai Medical Center,* 223 NLRB 251 (1976), the Board reaffirmed its treatment of students who ''perform services at their educational institutions [that] are directly related to their educational program'' and stated that the Board ''has universally excluded students from units which include nonstudent employees, and in addition has denied them the right to be represented separately.'' *St. Clare's Hospital,* 229 NLRB at 1002. The Board emphasized the rationale that such students are ''serving primarily as students and not primarily as employees . . . [and] the mutual interests of the students and the educational institution in the services being rendered are predominately academic rather than economic in nature.'' Id. The Board later overruled *St. Clare's Hospital* and *Cedars-Sinai* in *Boston Medical Center,* 330 NLRB 152 (1999), and asserted jurisdiction over the interns, residents, and fellows who had already completed their formal studies and received their academic degrees. The Board in *Boston Medical Center* did not address the status of graduate assistants who have not received their academic degrees.

[6] The *Brown University* Board ''express[ed] no opinion'' regarding *Boston Medical Center,* supra. 342 NLRB at 483 fn. 4.

constitute ''the principal prerogatives of an educational institution.'' Id.

A decade later, a Board majority in *Columbia University,* 364 NLRB No. 90 (2016), reconsidered and overruled *Brown University.* The *Columbia* decision, however, went much further than reinstating the statutory employee holding in *NYU.* Whereas *NYU* had applied exclusively to certain graduate student assistants and had acknowledged the continuing viability of *Leland Stanford,* supra, the *Columbia* decision overruled *Leland Stanford* and expanded Section 2(3) of the Act and the rationale of *NYU* to cover—for the first time since the Board asserted jurisdiction over colleges and universities—both externally-funded graduate research assistants and undergraduate university student assistants.

Specifically, the Board determined that an employment relationship can exist under the Act between a private college or university and its employee, even when the employee is simultaneously a student. The Board observed that ''[s]tatutory coverage is permitted by virtue of an employment relationship; it is not foreclosed by the existence of some other, additional relationship that the Act does not reach.'' Id., slip op. at 2. Thus, an individual ''may be both a student *and* an employee; a university may be both the student's educator *and* employer.'' Id., slip op. at 7 (emphasis in original). Concluding that both Section 2(3) of the Act and the common law of agency support a finding of employee status, the Board cited the Supreme Court's observations that the breadth of the definition of ''employee'' in Section 2(3) is ''striking'' [7] and ''seems to reiterate the breadth of the ordinary dictionary definition of the term, a definition that includes any person who works for another in return for financial or other compensation.'' [8] Moreover, the Board stressed that Congress chose not to list student assistants among the Act's enumerated exclusions from the statutory definition of employee, which ''is itself strong evidence of statutory coverage.'' Id. (citing *Sure-Tan,* supra at 891–892). The Board concluded that university student assistants meet the common-law definition of *employee* establishing that an employee ''relationship exists when a servant performs services for another, under the other's control or right of control, and in return for payment.'' Id., slip op. at 3 (quoting *NYU,* 332 NLRB at 1206). Additionally, the Board explained that in past cases, the broad language in Section 2(3) had been interpreted to cover categories of workers that included paid union organizers (salts), undocumented workers, and confidential employees. Id., slip op. at 5.

The *Columbia* Board concluded that asserting jurisdiction over university student assistants who meet the common-law definition of employee furthers the Act's policies of encouraging collective bargaining and employees' freedom to express a choice for or against a bargaining representative. Id., slip op. at 6–7. Further, the Board rejected the ''theoretical'' claims in *Brown University* that classifying university student assistants as statutory employees and permitting them to bargain collectively would have a detrimental impact on the educational process, explaining, *inter alia,* that there is no empirical support for the proposition that collective bargaining cannot successfully coexist with a student-teacher relationship. Id., slip op. at 7.[9]

II. The Proposed Rule

Under the proposed rule, students who perform services at a private college or university related to their studies will be held to be primarily students with a primarily educational, not economic, relationship with their university, and therefore not statutory employees. See *Brown University,* 342 NLRB at 487.[10] The Board believes, subject to potential revision in response to comments, that the proposed rule reflects an understanding of Section 2(3) that is more consistent with the overall purposes of the Act than are the majority opinions in *NYU* and *Columbia University.* Thus, the proposed rule is based on the view that the common-law definition of employee is not conclusive because the Act, and its policy promoting collective bargaining, ''contemplates a primarily economic relationship between employer and employee, and provides a mechanism for resolving economic disputes that arise in that relationship.'' *Brevard Achievement Center,* 342 NLRB 982, 984–985 (2004).

The Supreme Court has recognized the importance of these Congressional policies in determining whether individuals are statutory employees. For example, in *NLRB* v. *Bell Aerospace Corp.,* 416 U.S. 267 (1974), the Court held that although managerial employees are not explicitly excluded from the definition of an employee in Section 2(3), they nevertheless fall outside the Act's coverage. As the Court explained:

> [T]he Wagner Act was designed to protect 'laborers' and 'workers,' not vice presidents and others clearly within the managerial hierarchy. Extension of the Act to cover true 'managerial employees' would indeed be revolutionary, for it would eviscerate the traditional distinction between labor and management. If Congress intended a result so drastic, it is not unreasonable to expect that it would have said so expressly. [Id. at 284 fn. 13.] [11]

The Board has similarly held that individuals without a sufficient economic relationship to an employer are not statutory employees. See, *e.g., Toering Electric Co.,* 351 NLRB 225, 228 (2007) (finding applicants for employment are not statutory employees if they lack a genuine interest in working for the employer as this is ''not the economic relationship contemplated and protected by the Act''); *Brevard Achievement Center,* 342 NLRB at 984 (finding individuals with disabilities are not statutory employees if the relationship to their employer is ''primarily rehabilitative'' rather than ''typically industrial''); *WBAI Pacifica Foundation,* 328 NLRB at 1275 (finding unpaid staff are not statutory employees as the Act contemplates ''a fundamentally economic relationship between employers and employees'').

[7] Id., slip op. at 4 & fn. 32 (quoting *Sure-Tan, Inc.* v. *NLRB,* 467 U.S. at 891).

[8] Id., slip op. at 4 & fn. 33 (quoting *Town & Country Electric,* 516 U.S. at 90 (internal quotations omitted)).

[9] The *Columbia* Board also summarily overruled *San Francisco Art Institute,* 226 NLRB 1251 (1976), as incompatible with the holding that student employees were entitled under Section 2(3) to engage in collective bargaining. 364 NLRB No. 90, slip op. at 24 fn. 130. The Board in *San Francisco Art Institute* had held that it would not effectuate the policies of the Act to direct an election in a unit consisting only of student janitors. Without expressly deciding the status of the student janitors under Sec. 2(3), the Board reasoned that this unit would not be appropriate for purposes of collective bargaining because of the ''the very tenuous secondary interest that these students have in their part-time employment.'' Id. at 1252. In reaching this conclusion, the Board was influenced by the ''brief nature of the students' employment tenure, by the nature of compensation for some of the students, and by the fact that students are concerned primarily with their studies rather than with their part-time employment,'' as well as the concern that ''owing to the rapid turnover that regularly and naturally occurs among student janitors, it is quite possible that by the time an election were conducted and the results certified the composition of the unit would have changed substantially.'' Id.

[10] The students at issue in *Brown University* were graduate student assistants. The proposed rule contemplates both graduate and undergraduate student assistants.

[11] See also *NLRB* v. *Yeshiva University,* 444 U.S. at 689 (1980) (in finding the faculty of Yeshiva University to be ''managerial employees'' outside the Act's coverage, observing that ''the analogy of the university to industry need not, and indeed cannot, be complete'').

The holding in *Brown University* that the student teaching assistants and research assistants had a primarily educational, not economic, relationship with their school appears to fit comfortably with this line of decisions. For example, students who assist faculty members with teaching or research generally do so because those activities are vital to their education; they gain knowledge of their discipline and cultivate relationships with faculty. See *Brown University,* 342 NLRB at 489 (''[T]he role of teaching assistant and research assistant is integral to the education of the graduate student . . .'').[12] In fact, performing such services is often a prerequisite to obtaining the student's degree.

Another consideration is that students spend a limited amount of time performing these additional duties because their principal time commitment is focused on their coursework and studies. See id. at 488. Further, with regard to remuneration, students typically receive funding regardless of the amount of time they spend researching or teaching, and only during the period that they are enrolled as students. See id. at 488–489. Therefore these funds, which are provided to help pay the cost of students' education, are better viewed as financial aid than as ''consideration for work.'' Id.

Additionally, the goal of faculty in advancing their students' education differs from the interests of employers and employees engaged in collective bargaining, who ''proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest.'' Id. at 488 (quoting *NLRB* v. *Insurance Agents,* 361 U.S. 477, 488 (1960)). Faculty members educate, evaluate, and mentor students. Collective bargaining over those matters appears to be inappropriate given that faculty and students are engaged in an individualized learning experience.

Finally, a statutory construction of Section 2(3) consistent with the Board's ''longstanding rule that it will not assert jurisdiction over relationships that are 'primarily educational'" advances the important policy of protecting traditional academic freedoms. See *Brown University,* supra at 488, 490. These freedoms include both free speech rights in the classroom and several matters traditionally in the domain of academic decision-making, including those concerning course content and length; class size and location; who, what, and where to teach or research; university student assistants' educational and service responsibilities; and standards for advancement and graduation. Id. at 490.[13] Subjecting these important academic freedoms to traditional collective bargaining would necessarily and inappropriately involve the Board in the academic prerogatives of private colleges and universities as well as in the educational relationships between faculty members and students. See *Brown University,* supra at 492 (''[T]he broad power to bargain over all Section 8(d) subjects would, in the case of graduate student assistants, carry with it the power to intrude into areas that are at the heart of the educational process.''). Indeed, the nature of the general duty to bargain under the Act uniquely imperils the protection of academic freedoms.

As noted above, the proposed rule would exclude from Section 2(3)'s coverage of employees those students who perform any services in connection with their undergraduate or graduate studies at a private college or university, including, but not limited to, teaching or research assistance. However, the Board also invites comments on whether the rule should also apply to exclude from Section 2(3) coverage students employed by their own educational institution in a capacity unrelated to their course of study due to the ''very tenuous secondary interest that these students have in their part-time employment.'' *San Francisco Art Institute,* supra at 1252.

III. Validity and Desirability of Rulemaking

Section 6 of the Act provides that ''[t]he Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act], such rules and regulations as may be necessary to carry out the provisions of this Act.'' The Board interprets Section 6 as authorizing the proposed rules and invites comments on this issue. Although the Board historically has made most substantive policy determinations through case adjudication, the Board has, with Supreme Court approval, engaged in substantive rulemaking. *American Hospital Assn.* v. *NLRB,* 499 U.S. 606 (1991) (upholding Board's rulemaking on appropriate bargaining units in the healthcare industry); see also *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 294 (1974) (''[T]he choice between rulemaking and adjudication lies in the first instance within the Board's discretion.''). Indeed, although the Board first asserted statutory jurisdiction over private colleges and universities in case adjudication,[14] it subsequently established the discretionary minimum standard for asserting jurisdiction through notice and comment rulemaking, and the proposed rule excluding student assistants from the Act's coverage would be incorporated as an amendment to the jurisdictional standard set forth in 29 CFR 103.1.[15]

The Board finds that informal notice-and-comment rulemaking is preferable to adjudication with respect to the industry-wide determination whether students who perform services in connection with their studies are ''employees'' within the meaning of Section 2(3) of the Act. The rulemaking process provides the opportunity for broader public input than in case adjudication and, consequently, for Board consideration of a record of any variations in student assistant and other academic work-related programs than might not exist in any single educational institution. It also does not depend on participation and argument by parties in a specific case, and it cannot be mooted by developments in a pending case. In this regard, we note that the student employee issue has been raised recently by requests for review in several cases pending before the Board, but in each of those cases the issue was mooted by withdrawal of the underlying representation petition. Finally, the Board believes that rulemaking will enable students, unions, and private colleges and universities to plan their affairs with greater predictability and certainty than has existed during the recent history of adjudicatory oscillation.

IV. Response to the Dissent

Our dissenting colleague is not surprisingly of the opinion that the *Columbia University* majority, of which she was a member, has made the only rational interpretation of a statutory provision that is silent on the issue of whether paid student assistants are employees under the Act. This is so in spite of the fact that different Boards composed of different members have on

[12] See also *The Leland Stanford Junior University,* 214 NLRB at 623 (research assistants that ''are seeking to advance their own academic standing and are engaging in research as a means of achieving that advancement'' do not constitute statutory employees).

[13] See also *Sweezy* v. *State of New Hampshire,* 354 U.S. 234, 263 (1957) (Frankfurter, J, concurring) (Academic freedom includes the right of a university ''to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'') (citation omitted).

[14] *Cornell University,* supra.

[15] See fn. 4, supra.

multiple occasions reached different and conflicting conclusions for varying reasons on that issue. Further, our colleague apparently believes that the finality that should be assigned to the *Columbia* majority decision justifies her departure from a frequently-voiced complaint that we are required and have failed to invite public input before overruling precedent.

We emphatically reject our colleague's offensive claim that we propose to reverse progress made by student employees with respect to improved working conditions ''in the name of preserving higher education.'' We do not aim in this process to reverse that progress. Our goal is simply to determine whether the Board has statutory jurisdiction over student employees in private colleges and universities. As our colleague surely knows, if we do not have jurisdiction, then we lack the authority to protect student employees' union and other concerted activities to secure or retain improved terms and conditions of employment, however worthy those activities may be. Of course, that is undisputedly the case with respect to the experiences at many public institutions of higher learning that our colleague cites as examples of how collective bargaining can work.

Moreover, while not determinative, we note that almost all of the progress our colleague refers to at private universities and colleges has been secured through voluntary collective bargaining and/or the use of traditional economic weapons without invoking the Board's jurisdiction. In fact, unions seeking to represent student employees at private universities have on numerous occasions since *Columbia* withdrawn election petitions. Through the notice and comment process we initiate today, we will have the opportunity to hear directly from those involved about their experiences and how they relate to the jurisdictional issue before us.

V. Dissenting View of Member Lauren McFerran

In the wake of the Board's 2016 *Columbia University* decision,[16] which held that students who work for their universities are protected by the National Labor Relations Act, student employees across the country have been seeking—and often winning—better working conditions: Better pay, better health insurance, better child care, and more.[17] Today, the majority proposes to reverse this progress, in the name of preserving higher education. While student employees clearly see themselves as workers, with workers' interests and workers' rights, the majority has effectively decided that they need protecting from themselves. I disagree.

There is no good basis—in law, in policy, or in fact—to take these workers' rights away. Instead, the majority revives tired old arguments rightly rejected by the Board in *Columbia*—and, even before that, in the Board's 2000 decision in *New York University,*[18] which first found student employees protected. Today's proposal—like the view of the dissenting Board member in *Columbia* and the position taken by the Board in its misguided *Brown University* decision[19]—reflects a deep misunderstanding of our statute, as interpreted by the Supreme Court, which broadly protects private-sector employees and which has no special exception for working students. At bottom, the majority relies on speculative claims about the harm collective bargaining supposedly will do to the students themselves, as well as to their universities. But those claims are not only unsupported, they are refuted by what has happened in the real world. The majority has chosen to address this issue via rulemaking, but in rulemaking empirical evidence must govern. The *Brown University* view, the *Columbia* dissenter's view, and the majority's view today, will all be put to a test that they cannot survive. There is no need to proceed this way, when the Board can and should adhere to the *Columbia* decision and affirm the right of student employees to engage in collective bargaining.

A.

The Board's decision in *Columbia* (not to mention its earlier *New York University* decision) has already rebutted the legal premises the majority now relies on. As the *Columbia* Board explained, the ''broad language'' of the National Labor Relations Act—the Act covers ''any employee,'' subject to certain exceptions, ''none of which address students employed by their universities''—coupled with the ''unequivocal policy of the Act'' to encourage collective bargaining, means that the Board should ''extend statutory coverage to students working for universities . . . unless they are strong reasons *not* to do so.''[20] There are no such reasons, and there never have been.[21]

Recycling a made-up distinction, the majority argues that only employees

[16] 364 NLRB No. 90 (2016).

[17] See Colleen Flaherty, *A TA Union Contract, 2 Years Later,* Inside Higher Ed, Sept. 5, 2018, available at *https://www.insidehighered.com/news/2018/09/05/brandeis-grad-students-win-significant-gains-union-contract-even-trump* (noting substantial economic gains in newly-negotiated contract for student employees at Brandeis); David Ludwig, *Why Graduate Students of America Are Uniting,* The Atlantic, Apr. 15, 2015, available at *https://www.theatlantic.com/education/archive/2015/04/graduate-students-of-the-world-unite/390261/;* Rachel Bernstein, *Ivy League Graduate Students Push for Unionization,* Science, Apr. 28, 2015, available at *https://www.sciencemag.org/careers/2015/04/ivy-league-graduate-students-push-unionization* (''Graduate students' concerns include inadequate health insurance, high prices for dependent coverage on student health insurance policies, and insufficient child care and family leave support.''); Daniel Moattar, *How Graduate Unions Are Winning—and Scaring the Hell out of Bosses—in the Trump Era,* In These Times, Nov. 29, 2018, available at *https://inthesetimes.com/working/entry/21602/graduate_student_unions_trump_nlrb_columbia_brown* (according to labor law professor and advocate Risa Lieberwitz, ''More and more, we see the growth in the ranks of administrators, the shrinking of the ranks of tenured- and tenure-track faculty, and a lot of the shifting of the work of faculty to TAs [teaching assistants] and RAs [research assistants][,]'' making graduate students and adjuncts ''a body of very low-wage employees.'').

[18] 332 NLRB 1205 (2000).

[19] As scholars have pointed out, the *Brown University* decision offered ''no empirical support'' for its claims even though the ''assertions are empirically testable.'' Catherine L. Fisk & Deborah C. Malamud, *The NLRB in Administrative Exile: Problems with Its Structure and Function and Suggestions for Reform,* 58 Duke L. J. 2013, 2076–2077 (2009).

[20] 364 NLRB No. 90, slip op. at 1–2 (emphasis in original), citing National Labor Relations Act, Sec. 1, 29 U.S.C. 151, and Sec. 2(3), 29 U.S.C. 152(3).

[21] Rather than acknowledge the uphill challenge that the Act's language and policy present, the majority notes that the Sec. 2(3) definition of ''employee'' ''neither expressly includes nor excludes'' student employees, suggesting that the absence of a specific exclusion allows the Board to exclude any category of workers not specifically included. That notion—that whatever Congress may have said, the Board is free to narrow the coverage of the Act—is simply wrong, as the Supreme Court's decisions make clear. See *NLRB* v. *Town & Country Elec., Inc.,* 516 U.S. 85, 91, 94 (1995) (''[B]road, literal interpretation of the word 'employee' is consistent with several of the Act's purposes, such as protecting the right of employees to organize for mutual aid without employer interference . . .; and encouraging and protecting the collective-bargaining process. And, insofar as one can infer purpose from congressional reports and floor statements, those sources too are consistent with the Board's broad interpretation of the word. It is fairly easy to find statements to the effect that an 'employee' simply means someone who works for another for hire, and includes every man on a payroll . . . . [W]hen Congress uses the term 'employee' in a statute that does not define the term, courts interpreting the statute must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of that term.''); *Sure-Tan, Inc.* v. *NLRB,* 467 U.S. 883, 891–92 (1984) (''Since undocumented aliens are not among the few groups of workers expressly exempted by Congress, they plainly come within the broad statutory definition of 'employee.' ''). See generally *Andrus* v. *Glover Const. Co.,* 446 U.S. 608, 616–17 (1980) (''Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.'').

whose relationship with their employer is ''primarily economic'' (as opposed to ''primarily educational'') should be covered.[22] But as the *Columbia* Board explained, the Act clearly contemplates coverage of any common-law employment relationship; it does not care whether the employee and the employer also have some *other* non-economic relationship, beyond the reach of the Act.[23] The *Columbia* Board went on to explain why covering student employees promoted the goals of federal labor policy, why it did not infringe on First Amendment academic freedom, and why empirical evidence (as well as the Board's experience) demonstrated that coverage was appropriate.[24] As the *Columbia* Board correctly concluded, ''there is no compelling reason—in theory or in practice—to conclude that collective bargaining by student assistants cannot be viable or that it would seriously interfere with higher education.'' [25]

B.

The empirical evidence relied on by the *Columbia* Board came from private-sector experience during the brief, prior period (2000–2004) when the Board had protected the rights of student employees and from experience in public universities, where collective bargaining by student employees has long been common.[26] Following *Columbia,* of course, student employees at private universities have exercised their labor-law rights, continuing to organize unions, win representation, and secure collective-bargaining agreements—all without any apparent damage to higher education. The majority ignores this development, although it must be aware of it—otherwise, the impetus for this entire project would be a mystery.

In the private sector, there are at least five executed collective bargaining agreements between student employee unions and universities: New York University (NYU),[27] The New School,[28] American University,[29] Tufts University,[30] and Brandeis University.[31] Several other schools are currently in negotiations for an agreement.[32] Of the contracts that have been executed, all but the NYU agreement (which was negotiated pursuant to voluntary recognition) involved unions certified in Board elections after *Columbia* issued.[33]

[22] The majority points to the fact that the Board has reached ''conflicting conclusions'' on whether the Act should be read to include student employees as a self-reinforcing basis to assume that there are multiple valid interpretations thereof. As I have discussed herein and as *Columbia* goes to great lengths to address, the legal analysis in *Brown* and earlier decisions, finding that student employees are not statutory employees, cannot be reconciled with the language of the Act and with binding Supreme Court law. But even assuming that it were permissible for the Board to exercise its discretion to return to the pre-*Columbia* approach, any such shift would have to be reconciled with the real-world evidence that collective bargaining in this industry has proven both feasible and successful.

[23] *Columbia University,* supra, 364 NLRB No. 90, slip op. at 5–6. See *Town & Country Electric,* supra, 516 U.S. at 88, 95 (chief purpose of union salts was to organize and form a union, not to benefit economically, yet they were nonetheless employees); *Seattle Opera Assn.,* 331 NLRB 1072, 1073 (2000) (while auxiliary choristers received nonmonetary benefit in the form of personal satisfaction at their involvement in the opera, their relationship had features of common-law employment and therefore they were statutory employees), enfd. 292 F.3d 757 (D.C. Cir. 2002).

The lone case where the Supreme Court has excluded a class of common-law employees who were not among the Act's enumerated exceptions offers no support for the majority's effort here. In endorsing the exclusion of managerial employees, *Bell Aerospace* sets a high bar. The recognized exception for managerial employees was firmly rooted in specific, demonstrable legislative policies: The Court pointed to ''the House Report and the Senate Report,'' both of which ''voiced concern over the Board's broad reading of the term 'employee' to include those clearly within the managerial hierarchy,'' as well as ''legislative history strongly suggesting'' that managerial employees were ''regarded as so clearly outside the Act that no specific exclusionary provision was thought necessary.'' *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 281, 283 (1974) (internal quotations and brackets omitted); see also *Sure-Tan,* supra, 467 U.S. at 892–93 (looking for identifiable statutory text or policies concerning coverage of undocumented workers under the Act and further examining, to the extent any policies exist, whether there would be any specific conflict).

The majority also cites *NLRB* v. *Yeshiva University,* 444 U.S. 672 (1980) for the proposition that the Act recognizes the absence of ''pyramidal hierarchies'' in an educational setting that might make the application of the Act inapt. But there the Court was referring very specifically to the collective ''*faculty* governance'' that had historically characterized relationships between the faculty at issue in *Yeshiva,* and their employer. Indeed, it was in light of this particular shared control that the Court analyzed the question of whether faculty members could be deemed managerial employees. The case said nothing at all concerning student employees, who obviously are not in the same position as faculty members and who plainly are in a hierarchical relationship to the university.

[24] 364 NLRB No. 90, slip op. at 6–12.

[25] Id. at 12. As the *Columbia* Board pointed out, to support any argument that student employees should *not* be covered by the Act, there must be both identifiable congressional policies that coverage would implicate and empirical data that coverage would harm those policies—elements that are both absent from the majority's proposal. See id. at 7–12. Indeed, there is no logical basis to presume, as the majority does here in the absence of data, that covering student employees will affect any academic concerns. The *Columbia* Board correctly observed that ''[d]efining the precise contours of what is a mandatory subject or bargaining for student assistants is a task that the Board can and should address case by case.'' Id. at 8 (footnote omitted). Where a question arises whether bargaining rights might infringe on academic matters, an ''employer is always free to persuade a union that it cannot bargain over matters in the manner suggested by the union because of these restrictions. But that is part of the bargaining process: The parties can identify and confront any issues of academic freedom as they would any other issue in collective bargaining . . . . If the parties cannot resolve their differences through bargaining, they are free to seek resolution of the issues by resort to [the Board's] processes, and [the Board] will address them [by, for example, delineating between what is a mandatory or permissive subject of bargaining] at the appropriate time.'' *Boston Med. Ctr. Corp.,* 330 NLRB 152, 164 (1999).

[26] See *Columbia,* 364 NLRB No. 90, slip op. at 9 (''Recent data show that more than 64,000 graduate student employees are organized at 28 institutions of higher education, a development that began at the University of Wisconsin at Madison in 1969 and that now encompasses universities in California, Florida, Illinois, Iowa, Massachusetts, Michigan, Oregon, Pennsylvania, and Washington.'').

[27] Available at *https://makingabetternyu.org/app/uploads/GSOCNYU_2015contract_searchable.pdf.*

[28] Available at *https://sensuaw.org/app/uploads/2019/01/SENS-UAW-CBA-_Executed_01232019.pdf.*

[29] Available at *https://www.american.edu/provost/academicaffairs/graduate_student_employees/upload/au-graduate-employees-cba.pdf.*

[30] Available at *https://as.tufts.edu/sites/default/files/2018-2023-GSAS-CBA-Signed.pdf.*

[31] Available at *https://www.brandeis.edu/humanresources/CollectiveBargainingAgreement/documents/Brandeis-Graduate-Assistant-CBA.pdf.*

[32] Shera S. Avi-Yonah and Molly C. McCafferty, *Grad Unionization Movement Sees Successes Nationwide As Harvard Begins Bargaining,* The Harvard Crimson, Nov. 27, 2018, available at *https://www.thecrimson.com/article/2018/11/27/union-efforts-peer-institutions/* (student employee unions recognized and bargaining underway at Harvard, Georgetown, Brown, Columbia Universities). Notably, where there has been majority support for student employee unions but universities have refused to bargain, this has typically resulted in continuing demonstrations and other forms of student pressure to achieve bargaining. See Lee Harris, *Graduate Student Workers Across Chicago Ramp Up Unionization Efforts,* The Chicago Maroon, Apr. 26, 2019, available at *https://www.chicagomaroon.com/article/2019/4/26/graduate-student-unions-loyola-arrests-northwestern-uchicago-gsu/* (at University of Chicago and Loyola University Chicago, students have had pro-union votes but universities have declined to recognize them, leading to demonstrations, sit-ins, and even arrests).

[33] The majority claims that the economic progress by student employees has been achieved largely through voluntary recognition and mechanisms outside the Board procedures. The evidence suggests, however, that the Board's establishment of legal procedures for recognition and bargaining has played an outsized role. In fact, since *Columbia* issued, student-employee unions have won numerous NLRB-supervised elections, including at Columbia, The New School, Brandeis, Tufts, the University of Chicago, Loyola University Chicago, Boston College, and American University. NLRB elections at these schools involved a combined approximate number of 10,000 eligible voters per the NLRB's own tally sheets, leading to six Board certifications of representative and at least four contracts. At the University of Chicago and Boston College—as well as in several units at Yale, which involved multiple, smaller academic units—the unions prevailed, but withdrew their petitions after the universities appealed the results, out of concern that they would be used by the Board as a vehicle to reverse *Columbia.* See Colleen Flaherty, *Realities of Trump-Era NLRB,* Inside Higher Ed, Feb. 15, 2018, available at *https://www.insidehighered.com/news/2018/02/15/blow-graduate-student-union-movement-private-campuses-three-would-be-unions-withdraw;* Jingyi Cui, *Will grad students*

The striking thing about these contracts is the focus on traditional subjects of collective bargaining, such as compensation, leave time, and health care.

Against the backdrop of these agreements, the majority's factual assertions—for which it offers no empirical evidence—ring especially hollow. The majority claims that student employees should not be allowed bargaining rights because, through their employment, they ''gain knowledge of their discipline and cultivate relationships'' and ''assist faculty members . . . because those activities are vital to their education.'' [34] My colleagues also express concern that, in addition to harming the education of the graduate employees, allowing graduate employees to bargain will affect universities' academic prerogatives, such as directing the content, methods, and standards of education.

These assertions do not stand up to scrutiny. As the *Columbia* Board observed:

> [C]ollective bargaining and education occupy different institutional spheres . . . . [A] graduate student maybe both a student *and* an employee; a university may both the student's educator *and* employer. By permitting the Board to define the scope of mandatory bargaining over ''wages, hours, and other terms and conditions of employment,'' the Act makes it entirely possible for these different roles to coexist—and for genuine academic freedom to be preserved.

364 NLRB No. 90, slip op. at 7 (emphasis in original), quoting Act, Sec. 8(d), 20 U.S.C. 158(d). The evidence demonstrates that student employees are organizing not to interfere with their educations, but to improve their working conditions and to provide for themselves and their families.[35] There is nothing illegitimate about that. As the *Brown* Board did before, today's majority ''errs in seeing the academic world as somehow removed from the economic realm that labor law addresses—as if there were no room in the ivory tower for a sweatshop.'' [36]

Unsurprisingly, then, evidence from contemporary bargaining shows that student employees are not trying to alter aspects of their own educational experience, nor to exert control over academic matters, but instead have focused on bread-and-butter issues—while accepting efforts to preserve universities' control over academic matters. The New School agreement, for example, included a broad management rights provision, which notes that ''[m]anagement of the University is vested exclusively in the University'' and in which the union ''agrees that the University has the right to establish, plan, direct and control the University's missions, programs, objectives, activities, resources, and priorities,'' including (among many other specified prerogatives) the right '' to determine or modify the number, qualifications, scheduling, responsibilities and assignment of ASWs [Academic Student Workers]'' and the right ''to exercise sole authority on all decisions involving academic matters.'' Such a clause preserves a university's academic freedom and prerogatives.[37] It also sets a foundation for continuing mentorship and cultivation of the educational features of assistantships, by leaving evaluation and direction of academic work in control of the university. In fact, the Tufts agreement outright encourages such mentorship:

> Supervisors shall provide regular feedback to Graduate Assistants on the work they perform, including advice, guidance, and support on how to improve their performance. Flexibility in such feedback is encouraged, so as to address the broad nature of work performed by Graduate Assistants and their individual needs.

Thus, while preserving the educational facets of the student employees' relationship to a university and its faculty, these recent collective-bargaining agreements instead focus on core economic issues that are faced by employees and employers everywhere.[38]

Relatedly, in bargaining that is still underway at other schools, such as Columbia, Harvard, Brown, and Georgetown, it appears that bread-and-butter issues have also been at the fore.[39] To the extent that agreements

ever get their union?, Yale Daily News, Feb. 15, 2018, available at *https://yaledailynews.com/blog/2018/02/15/will-grad-students-ever-get-their-union/.* Elsewhere, the change in Board law that required bargaining with a student-employee union was a likely impetus for voluntary recognition: Harvard, Georgetown, and Brown all agreed to recognize unions based on non-NLRB elections—*after Columbia issued.* See, *e.g.,* News From Brown, *Brown University, graduate student organizers finalize terms for Nov. 14–19 unionization vote,* Nov. 8, 2018, available at *https://www.brown.edu/news/2018-11-08/election.*

[34] The majority also asserts that student employees' ''principal time commitment is focused on their coursework and studies. But what portion of their time is spent working for the universities makes no difference to whether they should be treated as statutory employees. That student employees are seeking union representation and pursuing collective bargaining should tell the Board all it needs to know: Their work and their working conditions matter to them.

The majority asserts that student-employee compensation is not directly tied to the time spent at tasks and that compensation is more akin to financial aid. But salaried employees are covered by the Act, just as hourly or piece-rate employees are. Nor does the nature of compensation matter, so long as it is compensation for work.

[35] See *Columbia.,* supra, 364 NLRB No. 90, slip op, at 15, 16 (student employees at Columbia may work 20 hours a week and may teach undergraduate ''core curriculum,'' indicating a role ''akin to that of faculty'' and involving routine elements of educating undergraduates). See also Ben Kesslen, *The latest campus battle: Graduate students are fighting to unionize,* NBC News, June 8, 2019, available at *https://www.nbcnews.com/news/us-news/latest-campus-battle-graduate-students-are-fighting-unionize-n1015141* (''At some universities, more than 15 percent of courses list graduate students as primary instructors and some undergraduates spend half of their instruction hours with graduate teaching assistants.'').

[36] *Brown University,* supra, 342 NLRB at 494 (dissenting opinion of Member Liebman and Member Walsh).

[37] Relatedly, the Brandeis agreement management rights clause provides, inter alia, that management shall:

> Exercise sole authority on all decisions involving academic matters, including:
>
> (a) Any judgments concerning academic programing, including (i) courses, curriculum and instruction; (ii) content of courses, instructional materials, the nature and form of assignments required including examinations and other work; (iii) methods of instruction; (iv) class size; (v) grading policies and practices; and (vi) academic calendars and holidays;
>
> (b) the development and execution of policies, procedures, rule and regulations regarding the Graduate Assistants' status as students, including but not limited to all questions of academic standing and intellectual integrity; and
>
> (c) any evaluations and determinations of Graduate Assistants progress as students, including but not limited to the completion of degree requirements.

The Tufts and NYU agreements contain similar language. Meanwhile, at Harvard, the University has insisted that negotiations only cover employment issues and not academic matters. See Harvard Univ. Office of the Provost, *FAQs about Graduate Student Unionization,* available at *https://provost.harvard.edu/unionization-faqs* (''To the extent that policies and benefits are tied to the educational relationship between the University and its students, rather than an employment relationship, they would not be mandatory subjects of bargaining under the NLRA. For example, grades and grade appeals would not be topics of negotiations because they fundamentally involve the assessment of students as students, not as employees.''). Similarly, the Columbia bargaining framework states: ''The GWC–UAW and CPW–UAW agree that any collective bargaining agreement to be negotiated with Columbia must not infringe upon the integrity of Columbia's academic decision-making or Columbia's exclusive right to manage the institution consistent with its educational and research mission.'' See Columbia Framework Agreement, available at *https://columbiagradunion.org/app/uploads/FrameworkAgreement20181119.pdf.* Such management rights provisions, defining management control over academic prerogatives, are common in the public sector as well. See *Columbia,* supra, 364 NLRB No. 90, slip op. at 9.

[38] See also Teresa Kroeger et al., *The state of graduate student employee unions,* Economic Policy Inst., Jan. 11, 2018, available at *https://www.epi.org/publication/graduate-student-employee-unions/* (noting massive amounts of debt grad student must occur and that this is driving unionization efforts).

[39] See Georgetown Alliance of Graduate Employees, Contract Working Groups, available at *http://www.wearegage.org/issues; Brown University Graduate Student Employees, Opening Statements*

Continued

have not been reached, it appears to be because of disagreement over such economic subjects. For example, at Columbia, traditional economic issues seem to predominate the union's bargaining agenda.[40] Meanwhile, at Harvard, issues directly involving financial well-being loomed large in the union's description of its bargaining experiences. At one point the bargaining team's update states: ''With childcare costs $2,000/month, dependent insurance at $300/month, rent upwards of $2,000 for a one-bedroom apartment, how can student parents afford to work on this campus?'' [41] Even a cursory examination of the agreements and bargaining progress of student-employee unions leaves little doubt: The issues animating student employees' efforts are genuine concerns over their needs and interests as employees—issues that the Act is intended to allow employees to bargain over.[42]

Notably, Harvard's administration has effectively acknowledged that bargaining over terms and conditions of employment can occur without affecting issues that a university feels are central to its academic mission. The University president noted, ''We will be very adamant about differentiating between matters that are appropriate for academic decision making from matters that are concerns of a labor or employment situation.'' [43] Nor have student employees been pressing for influence on academic matters, in either the public or private sector. One labor law scholar pointed out that ''[t]here is not a single case of an academic union insisting on bargaining over grades, letters of recommendation, awarding of honors, tenure criteria, what fields of specialization a department should concentrate in, admission criteria, or any other academic judgment.'' [44]

While unsuccessfully attempting to demonstrate how collective bargaining will harm education, the majority neglects the economic features of the relationship between universities and student employees—and how strained economic circumstances among student employees have generated labor unrest.[45] As the *Columbia* Board observed, ''[i]n the absence of access to the Act's representation procedures and in the face of rising financial pressures, [student employees] have been said to be 'fervently lobbying their respective schools for better benefits and increased representation'—entirely the benefits that would flow with respect to economic aspects of the relationship.'' [46] Today's proposal seems to disregard the genuine difficulties faced—whether working long hours and juggling research and coursework, or struggling to afford health care and child care—by student employees, and the obvious fact that they might benefit by exercising their rights under the National Labor Relations Act. Indeed, financial insecurity can certainly be an obstacle to academic achievement—the main concern the majority purports to protect.[47]

Ironically, after the *Columbia* Board successfully opened the Act's protection and procedures to student employees, today's proposal will raise the specter of renewed unrest on campus. That result is directly contrary to the Act's stabilizing purposes. The desire of student employees for union representation and for better working conditions will not go away simply because the Board has closed its doors. Instead, that desire will have no clear and appropriate outlet, especially in the face of universities' resistance. For example, when Columbia initially refused to bargain in the hopes of succeeding in a legal challenge, student demonstrations and unrest followed.[48] Relatedly, University of Chicago students struck because the university refused to honor their vote to unionize.[49] Further, when schools have withheld voluntary recognition in light of the prospect of the Board reversing *Columbia,* this strategy has provoked further unrest.[50] Representation elections and collective bargaining under the Board's supervision is the far better alternative.

C.

In proposing to reverse the *Columbia* decision, the majority has shown little interest in the facts on the ground. But it is not too late for the Board to turn back. Perhaps robust public participation in the comment process will help create a rulemaking record that refutes, once and for all, the notion that the National Labor Relations Act cannot be appropriately and productively applied to student employees and their university employers. On that score, I urge my colleagues to hold public hearings on today's proposal, so that the Board can hear directly from the student employees affected by today's proposal. To strip away all labor-law rights from tens of thousands of student employees—including many who have already begun exercising those rights—would be a terrible mistake.[51]

* * * * *

for Bargaining, available at *https://brownsugse.com/2019/04/08/read-sugses-opening-statement-for-the-first-day-of-bargaining/.*

[40] See GWC–UAW, Overview of Initial Bargaining proposals, available at *https://columbiagradunion.org/app/uploads/InitialBargainingGoals_highlights.pdf.*

[41] Harvard Graduate Student Union, Bargaining Updates, available at *http://harvardgradunion.org/members/bargaining-updates/.*

[42] Bargaining at Georgetown University illustrates how student employees share a serious and timely concern with workers across the country: There, remedies for discrimination and harassment were also a major issue at bargaining. The union's website noted that: ''In our bargaining survey last spring, *1 in 5 grad workers reported that they had experienced discrimination or harassment* in the workplace. Less than half of respondents said that they had reported the incidents and only 44 percent of those who reported it felt the university had responded appropriately.'' Georgetown Alliance of Graduate Employees, Bargaining Updates, July 24, 2019, available at *http://www.wearegage.org/news.*

[43] Shera S. Avi-Yonah and Molly C. McCafferty, *Experts Say Harvard's Union Bargaining Terms Differ From Typical Labor Contract,* The Harvard Crimson, May 4, 2018, available at *https://www.thecrimson.com/article/2018/5/4/academic-versus-labor-bargaining-parameters/.*

[44] Id. (quoting University of Oregon Professor Gordon Lafer).

[45] See, *e.g.,* Colleen Flaherty, *Grad Students' 'Fight for $15',* Inside Higher Ed, Oct. 26, 2018, available at *https://www.insidehighered.com/news/2018/10/26/graduate-student-assistants-campuses-across-us-are-pushing-15-hour-what-they-call.*

[46] *Columbia,* supra, slip op. at 12 (quoting David Ludwig, *Why Graduate Students of America Are Uniting,* The Atlantic, supra).

[47] See Kesslen, *The latest campus battle: Graduate students are fighting to unionize,* supra (''Almost one-third of doctoral students at the University of Chicago cited financial challenges as a roadblock to academic success, and seven percent reported running out of food without the ability to buy more . . . .'').

[48] See Beryl Lieff Benderly, *The push for graduate student unions signals a deep structural shift in academia,* Science, June 6, 2018, available at *https://www.sciencemag.org/careers/2018/06/push-graduate-student-unions-signals-deep-structural-shift-academia.*

[49] See Dawn Rhodes, *'We wanted a union then, and we deserved a union then': University of Chicago grad student workers go on strike,* Chicago Tribune, June 4, 2019, available at *https://www.chicagotribune.com/news/breaking/ct-met-university-of-chicago-graduate-student-strike-20190604-story.html.*

[50] See Kate McGee, *Chicago Graduate Student Unions Face Roadblocks to Unionization,* NPR, Apr. 10, 2019, available at *https://www.npr.org/local/309/2019/04/10/711906242/chicago-graduate-student-unions-face-roadblocks-to-unionization.*

[51] The majority is ''offen[ded]'' that I characterize today's proposal as one that will reverse progress made by student employees with respect to their working conditions. The majority insists that the question here is simply whether the Board is statutorily permitted to exercise jurisdiction over student employees. Insofar as the Board has discretion to exclude student employees from coverage—despite the existence of a common-law employment relationship with their university and the lack of any basis in the Act's text for such an exclusion—then the Board surely must consider the successful adjustment of purely workplace issues through the peaceful process of collective bargaining as a factor weighing in favor of asserting jurisdiction. The majority's failure to do so betrays at least an indifference to the achievements of student-employee bargaining, if not an outright desire to reverse them.

As explained, the majority proposes to permanently exclude a class of employees from statutory coverage, in contravention of the law's language and its policies. There is no reason to revisit the *Columbia* decision, now on the books for over three years, particularly in the absence of any empirical evidence that any educational interests have been harmed in any way. To the contrary, student employees have already succeeded in bargaining with their universities for better working conditions, the very interests that spurred their organizing movement—just as the National Labor Relations Act encourages. Because the proposed rule has no plausible foundation, I must dissent.

VI. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.,* requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis and to develop alternatives, wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The focus of the RFA is to ensure that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].'' E.O. 13272, Sec. 1, 67 FR 53461 (''Proper Consideration of Small Entities in Agency Rulemaking''). An agency is not required to prepare an initial regulatory flexibility analysis for a proposed rule if the Agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The Board concludes that the proposed rule will not affect a substantial number of small entities. In any event, the Board further concludes that the proposed rule will not have a significant economic impact on such small entities. Accordingly, the Agency Chairman has certified to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The NLRB is an agency within the meaning of the Paperwork Reduction Act (PRA), 44 U.S.C. 3502(1) and (5). This Act creates rules for agencies when they solicit a ''collection of information.'' 44 U.S.C. 3507. The PRA defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). The PRA only applies when such collections are ''conducted or sponsored by those agencies.'' 5 CFR 1320.4(a).

The proposed rule does not involve a collection of information within the meaning of the PRA. Outside of administrative proceedings (discussed below), the proposed rule does not require any entity to disclose information to the NLRB, other government agencies, third parties, or the public.

The only circumstance in which the proposed rule could be construed to involve disclosures of information to the Agency, third parties, or the public is during the course of Board administrative proceedings. However, the PRA provides that collections of information related to ''an administrative action or investigation involving an agency against specific individuals or entities'' are exempt from coverage. 44 U.S.C. 3518(c)(1)(B)(ii). A representation proceeding under Section 9 of the NLRA as well as an investigation into an unfair labor practice under Section 10 of the NLRA are administrative actions covered by this exemption. The Board's decisions in these proceedings are binding on and thereby alter the legal rights of the parties to the proceedings and thus are sufficiently ''against'' the specific parties to trigger this exemption.

For the foregoing reasons, the proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the PRA.

List of Subjects in 29 CFR Part 103

Colleges and universities, Health facilities, Joint-employer standard, Labor management relations, Military personnel, Music, Sports.

For the reasons set forth in the preamble, the Board proposes to amend 29 CFR part 103 to read as follows.

PART 103—OTHER RULES

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Revise § 103.1 to read as follows:

§ 103.1 Colleges and universities.

(a) The Board will assert its jurisdiction in any proceeding arising under Sections 8, 9, and 10 of the Act involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of limitation by the grantor, are not available for use for operating expenses) of not less than $1 million.

(b) Students who perform any services, including, but not limited to, teaching or research assistance, at a private college or university in connection with their undergraduate or graduate studies are not employees within the meaning of Section 2(3) of the Act.

Dated: September 18, 2019.

Roxanne Rothschild,

Executive Secretary.

[FR Doc. 2019–20510 Filed 9–20–19; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0493; FRL–9999–98–Region 9]

Air Plan Conditional Approval; Arizona; Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Maricopa County Air Quality Department (MCAQD or the County) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from organic liquid and gasoline storage and transfer operations. We are proposing to conditionally approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act) and conditionally approve the County's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) in the Phoenix-Mesa ozone nonattainment area, with respect to petroleum liquid storage and gasoline transfer and transport. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 23, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0493 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the

online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rebecca Newhouse, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105, (415) 972–3004, *newhouse.rebecca@epa.gov.*

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

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I. The State's Submittal

A. What did the State submit?

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ or the State).

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document	Revised	Submitted
MCAQD	Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP).	[1] 06/16/2017	06/22/2017
MCAQD	Rule 350: Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility.	11/02/2016	06/22/2017
MCAQD	Rule 351: Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals.	11/02/2016	06/22/2017
MCAQD	Rule 352: Gasoline Cargo Tank Testing and Use	11/02/2016	06/22/2017
MCAQD	Rule 353: Storage and Loading of Gasoline at Gasoline Dispensing Facilities	11/02/2016	06/22/2017

On December 22, 2017, the submittal containing the documents listed in Table 1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

In addition to these SIP submittals, the County and the ADEQ transmitted letters to the EPA [2] [3] committing to adopt and submit specific enforceable measures within a year of our final action that would remedy the deficiencies identified in this notice and further described in the associated technical support documents (TSDs) for this action.

The County's submittal states that Rules 350, 351, 352 and 353 were submitted to regulate sources associated with the Control Techniques Guidelines (CTGs) shown in Table 2:

TABLE 2—RULES AND ASSOCIATED CTGS [4]

County rule	Associated CTGs
Rule 350	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036).
	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047).
Rule 351	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036).
	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047).
	Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026).
	Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA–450/2–77–035).
Rule 352	Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA–450/2–78–051).
Rule 353	Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA–450/R–75–102).

[1] This document is dated December 5, 2016. It was adopted by the County on June 16, 2017.

[2] Letter dated January 28, 2019, from Philip A. McNeely, Director, MCAQD, to Misael Cabrera, Director, ADEQ.

[3] Letter dated February 25, 2019, from Misael Cabrera, Director, ADEQ, to Michael Stoker, Regional Administrator, EPA, Region IX.

[4] See RACT SIP, Appendix C: CTG RACT Spreadsheet.

B. Are there earlier versions of the submitted documents in the SIP?

We approved earlier versions of the rules listed in Table 1 into the SIP on September 5, 1995 (Rules 350 and 352) (60 FR 46024), February 9, 1998 (Rule 351) (63 FR 6489), and on February 1, 1996 (Rule 353) (61 FR 3578). There is no previously approved version of the RACT SIP for the 2008 8-hour ozone standard in the MCAQD portion of the Arizona SIP. The ADEQ previously submitted the documents in Table 1 in a SIP revision on December 19, 2016, along with the County's RACT SIP. However, this submittal did not include documentation that showed the entirety of the County's SIP revision had met the public notice requirements required for completeness under 40 CFR part 51 Appendix V. The County's June 22, 2017 submittal was provided in response to this feedback, and the State withdrew the December 19, 2016 submittal on May 17, 2019.[5]

C. What is the purpose of the submitted documents?

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Section 182(b)(2) requires that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a CTG document and for any major sources of VOCs. The MCAQD is subject to this requirement as it regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hr ozone NAAQS (40 CFR 81.303).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone 8-hour ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment areas covered by a specific CTG category. The County's RACT SIP provides MCAQD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. As a result of this analysis, the County revised and submitted the rules listed in Table 1 to establish RACT-level controls for VOC emissions from the petroleum liquid storage and gasoline transfer and transport CTG source categories shown in Table 2.

The EPA's TSDs have more information about the submitted rules and RACT SIP.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submitted documents?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hr ozone NAAQS 40 CFR 81.303. Therefore, these rules must implement RACT.

The County's RACT SIP explains that Rules 350, 351, 352, and 353 were revised and submitted in order to meet the RACT requirement for the source categories listed in Table 2. Accordingly, our evaluation of whether these rules establish RACT levels of control also constitutes our evaluation of the approvability of the MCAQD RACT SIP, with respect to those CTG source categories.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,'' EPA–450/2–77–036, December 1977.
5. ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA–450/2–78–047, December 1978.
6. ''Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035, December 1977.
7. ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026, October 1977.
8. ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' EPA–450/2–78–051, December 1978.
9. ''Design Criteria for Stage I Vapor Control Systems-Gasoline Service Stations,'' EPA–450/R–75–102, November 1975.
10. ''Alternative Control Techniques Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks,'' EPA–453/R–94–001, January 1994.

B. Do the submitted documents meet the evaluation criteria?

Rules 350, 351, 352, and 353 apply to sources of VOC emissions from organic liquid storage and gasoline transfer and storage operations in the Phoenix-Mesa area. The four rules are generally more stringent than the applicable CTGs, have requirements for organic liquid and gasoline storage and transfer that are generally consistent with other local air district rules for these source categories, and are largely consistent with the applicable CAA requirements. However, as identified below, the rules contain deficiencies that preclude full approval. In a letter dated January 28, 2019 (the ''commitment letter''), the County identified certain rule deficiencies and committed to revise those provisions in accordance with EPA guidance, and submit the revised rules within eleven months of a conditional approval.[6] On February 25, 2019, the ADEQ provided its own commitment to submit the County's revised rules to the EPA within one month after the County's action and request for SIP revision.[7] Because the commitments by the County and ADEQ would remedy the identified rule deficiencies, we propose to conditionally approve Rules 350, 351, 352, and 353, and the RACT SIP with respect to the VOC source categories covered by Rules 350, 351, 352, 353 (as provided in Table 2). Summaries of the specific rule deficiencies and the County's commitments to address those

[5] Letter dated May 17, 2019, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Michael Stoker, Regional Administrator, Region IX.

[6] Letter dated January 28, 2019, from Philip A. McNeely, Director, MCAQD, to Misael Cabrera, Director, ADEQ.

[7] Letter dated February 25, 2019, from Misael Cabrera, Director, ADEQ, to Michael Stoker, Region Administrator, EPA, Region IX.

deficiencies are included in the following sections.

Our TSDs for Rules 350, 351, 352, and 353 provide further details on our evaluation for these proposed conditional approvals.

C. What are the deficiencies?

The following provisions of Rules 350, 351, 352, and 353 do not fully satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision.

1. Rule 350 Deficiencies [8]

(a) Rule 350 includes exemptions from rule requirements for fuel consumed or dispensed at the facility directly to users, hazardous waste, which is undefined, and wastewater and ballast water, none of which are exempted from the applicable CTGs.

(b) The rule lacks an emissions limit for bulk terminals transferring organic liquid. The SIP-approved version requires an emissions limit of 0.08 lbs VOCs/1000 gallons transferred.[9]

(c) The rule contains inappropriate use of director's discretion with respect to the opening of hatches or seals on cargo tanks.* †

(d) Several sections do not clearly state rule prohibitions, and instead require owners and operators with particular types of tanks to put some amount of liquid into tanks that meet certain requirements. Section 301.3, in particular, appears to be missing the word ''not'' in a way that impacts the effectiveness of the requirement.*

(e) The rule exempts roofs from the requirement that they always be floating on liquid when the tank is being filled, instead of only while filling after the tank has been emptied completely.*

(f) The rule is not clear regarding which external floating roof tanks are exempt from the rule's requirements.*

(g) The rule does not clearly specify vapor control requirements for internal floating roof tanks.

(h) The rule contains an overly broad provision, allowing the opening of hatches, vent valves, or vapor sealing devices for vacuum relief when organic liquid is transferred from the cargo tank or railcar into a storage tank.*

2. Rule 351 Deficiencies [10]

(a) The rule allows the use of a less stringent compliance option than the SIP-approved rule for controlling VOC vapors from gasoline storage.[11]

(b) Rule 351 requirements for gasoline transfers at bulk plants are not as strict as requirements that have been demonstrated to be reasonably available in other air districts, as there is no emissions limit or vapor recovery efficiency requirement when vapor balance systems are used.

(c) The rule exempts the loading of aviation gasoline at airports from the rule's gasoline transfer requirements, which is not exempted from applicable CTGs or other analogous SIP-approved district rules.[12]

3. Rule 352 Deficiencies [13]

(a) The rule exempts cargo tanks with gasoline loads that originated outside of Arizona, and gasoline loads delivered outside Maricopa County, from the rule's gasoline cargo tank vapor tightness requirements. Exemptions from vapor tightness requirements based on where the cargo tank is initially filled or where it ultimately delivers gasoline are not provided for in the applicable CTG.

(b) The rule provides inappropriate discretion to unspecified agencies to certify cargo tanks vapor tight.

(c) The rule allows gasoline cargo tank vapor tightness tests to remain valid for up to two years, whereas the CTG and rules from other air districts require more frequent testing.

(d) The rule allows inappropriate discretion for the opening of cargo tank hatches during loading.

(e) No test method is specified for determining compliance with the provision requiring a 90% reduction in VOC emissions by weight when purging cargo tank vapors.

(f) The rule does not clearly prohibit purging of gasoline vapors from cargo tanks, including during switch loading, and may relax purging provisions as compared to the SIP-approved rule.

4. Rule 353 Deficiencies [14]

(a) The rule exempts an owner or operator from certain rule requirements if the gasoline dispensing facility (GDF) is unattended or there is only one owner or operator present. As there may be one attendant at a GDF in many instances for a variety of reasons, this exemption is overly broad and presents enforceability challenges.

D. What are the commitments to remedy the deficiencies?

The County's commitment letter includes specific and enforceable commitments, outlined below, to address the above deficiencies for Rules 350, 351, 352, and 353.

1. Rule 350 Commitments [15]

(a) Removing the exemptions for fuel consumed or dispensed at the facility directly to users, hazardous waste, wastewater, and ballast water, to address section II.C.1.a, above.

(b) Adding an emissions limit for organic liquid distribution facilities transferring over 600,000 gallons per 30-day period of organic liquid, based on a RACT analysis, to address II.C.1.b, above.

(c) Deleting the provision that allows Control Officer discretion for approval of hatch or seal opening, to address II.C.1.c, above.* †

(d) Rephrasing and restructuring the requirements for organic liquid storage tanks to clarify the specified requirements without weakening any substantive requirements, to address II.C.1.d, above.*

(e) Clarifying that the floating roof exemption will only apply when the tank is filled initially, after it is drained completely and subsequently refilled, or when undergoing maintenance requiring the roof be rested on its leg supports, to address II.C.1.e, above.*

(f) Removing the specified exemption for external floating roof tanks, to address II.C.1.f, above.*

(g) Deleting the specified section, and adding requirements for internal floating roof organic liquid storage tanks that match SIP-approved requirements, to address II.C.1.g, above.

(h) Limiting the conditions under which a hatch, vent valve, or vapor sealing device may be open during the organic liquid transfer from the cargo tank to the storage tank to those necessary to avoid unsafe operating conditions, to address II.C.1.h, above.*

2. Commitments for Rule 351 [16]

(a) Adding vapor loss control requirements that will be at least as stringent as the SIP-approved version, to address II.C.2.a above.

(b) Revising Rule 351 to include an emissions limit or vapor recovery efficiency for loading at a bulk gasoline plant, based on a RACT analysis, to address II.C.2.b, above.

[8] Rule deficiencies throughout this section marked with an asterisk (*) also apply to Rule 351; those marked with a dagger (†) also apply to Rule 352.

[9] The 0.08 lbs VOC/1000 gallons limit is included in SIP-approved Rule 351, which contains transfer requirements for organic liquid and gasoline.

[10] For additional Rule 351 deficiencies, please see Rule 350 deficiencies (c)–(f) and (h).

[11] The vapor loss control requirement is included in SIP-approved Rule 350, which contains storage requirements for organic liquid and gasoline.

[12] This deficiency also applies to Rule 352 and Rule 353.

[13] For additional Rule 352 deficiencies, please see Rule 350 deficiency (c), and Rule 351 deficiency (c).

[14] For an additional Rule 353 deficiency, please see Rule 351 deficiency (c).

[15] Rule commitments throughout this section marked with an asterisk (*) also apply to Rule 351; those marked with a dagger (†) also apply to Rule 352.

[16] For additional Rule 351 commitments, please see Rule 350 commitments (c)–(f) and (h), above.

(c) Removing the exemption for aviation gasoline loading at airports, to address II.C.2.c, above.[17]

3. Commitments for Rule 352 [18]

(a) Removing the vapor tightness test exemption for cargo tanks with gasoline loads that originated outside of Arizona and gasoline loads delivered outside Maricopa County, to address II.C.3.a, above.

(b) Requiring that a gasoline cargo tank tested outside Maricopa County be tested and verified vapor tight using methods at least as stringent as those found in the County's rule, and that testing documentation be submitted to the MCAQD, to address II.C.3.b.

(c) Revising vapor tightness certification expiration requirements to shorten the maximum testing interval, to address II.C.3.c.

(d) Revising to clarify and limit the conditions under which a hatch, vent valve, or vapor sealing device may be open during the transfer of gasoline from the cargo tank, to address II.C.3.d.

(e) Including appropriate EPA-approved test methods to determine compliance with at least a 90% reduction in VOC emissions by weight, to address II.C.3.e.

(f) Revising the purging requirements to include a prohibition on purging that is at least as stringent as the SIP-approved version, to address II.C.3.f.

4. Commitments for Rule 353 [19]

(a) Deleting the exemption for unattended GDFs, or GDFs where there is only one owner or operator present, to address II.C.4.a.

E. The EPA's Recommendations To Further Improve the Submitted Rules

The TSDs for Rule 350, 351, 352, and 353 describe additional rule revisions that we recommend for the next time the County modifies the rules.

F. Public Comment and Proposed Action

Rules 350, 351, 352, and 353 largely fulfill the relevant CAA § 110 and part D requirements, but the deficiencies, as discussed in section C, preclude full SIP approval pursuant to 110(k)(3) of the Act. Section 110(k)(4) authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.[20] Because the MCAQD and the ADEQ have committed to provide the EPA with a SIP submission within one year of this final action that will include specific rule revisions that would adequately address the identified deficiencies, we are proposing to conditionally approve Rules 350, 351, 352, and 353, pursuant to section 110(k)(4) of the Act. We are also proposing to conditionally approve MCAQD's RACT demonstrations for the 2008 8-hr ozone NAAQS with respect to the VOC source categories covered by Rules 350, 351, 352, and 353, as specified in Table 2. If the MCAQD and the ADEQ submit the required rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiencies will be cured. However, if these proposed conditional approvals are finalized, and MCAQD, through the ADEQ, fails to submit these revisions within the required timeframe, the conditional approval would be treated as a disapproval for those rules for which the revisions are not submitted (and the associated RACT SIP CTG source categories). We will accept comments from the public on this proposal until October 23, 2019. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MCAQD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because actions such as SIP approvals are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because the proposed conditional approvals, if finalized, will not in-and-of themselves create any new information collection burdens, but will simply conditionally approve certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. These proposed conditional approvals, if finalized, will not in-and-of themselves create any new requirements but will simply conditionally approve certain State requirements for inclusion in the SIP.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to conditionally approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revisions that the EPA is proposing to conditionally approve would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal

[17] This commitment also applies to Rule 352 and Rule 353.

[18] For additional Rule 352 commitments, please see Rule 350 commitment (c), and Rule 351 commitment (c).

[19] For an additional Rule 353 commitment, please see Rule 351 commitment (c).

[20] 42 U.S.C. 7410(k)(4).

governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the proposed conditional approvals, if finalized, will not in-and-of themselves create any new regulations, but will simply conditionally approve certain State requirements for inclusion in the SIP.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–20425 Filed 9–20–19; 8:45 am]

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Notices

Federal Register

Vol. 84, No. 184

Monday, September 23, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 17, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by October 23, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Grain Farm to Market Transportation Survey.

OMB Control Number: 0535–0264.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. NASS will conduct a survey of select agricultural operations in Illinois, Indiana, Iowa, Kansas, and Nebraska. Each selected farmer or rancher will be asked to provide data on (1) Vehicle inventory, (2) Vehicles used for grain transportation in crop year 2019, and (3) Distance by road type to primary and secondary delivery points in crop year 2019. General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

Need and Use of the Information: A significant component of agriculture is transportation of commodities to market. Effective equipment and infrastructure is necessary for farmers to transport harvested commodities to market. Farmers may use the results for their own investment and productivity assessments. Local and regional planners and policy makers can use the information in calibrating travel demand and freight flow models for investment and asset management choices. The United States Department of Agriculture's Agricultural Marketing Service has entered into an interagency agreement with NASS to conduct a Grain Farm to Market Transportation Survey. The purpose of the survey is to provide information about farm truck inventory and grain marketing patterns in selected States for commodity year 2019.

Description of Respondents: A sample of all active agricultural operations in Illinois, Indiana, Iowa, Kansas, and Nebraska that produce:

- Over 300 combined acres of corn, soybeans, and wheat in Kansas, and
- Over 300 combined acres of corn in soybeans in Illinois, Indiana, Iowa, and Nebraska.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 2,337.

Kimble Brown,

Departmental Information Collection Clearance Officer

[FR Doc. 2019–20468 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

[OMB Control No. 0503–XXXX]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Agriculture.

ACTION: Notice; request for comment.

SUMMARY: The Department of Agriculture, as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: Submit comments on or before: November 22, 2019.

ADDRESSES: Submit comments identified by Information Collection 0503–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *Federal eRulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.
- *Mail:* U.S. Department of Agriculture, Office of the Chief Information Officer, 1200 Independence Ave. SW, Washington, DC 20250, Attn:

Ruth Brown or Kimble Brown, A–11 Section 280 Improving Customer Experience.

Instructions: Please submit comments only and cite Information Collection 0503–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ruth Brown or Kimble Brown, Office of the Chief Information officer, Information Resources Management Center, 1200 Independence Avenue SW, Washington, DC 20250, or via email to: *USDA.PRA@USDA.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, USDA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans' benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. USDA will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

USDA will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USDA may also utilize observational techniques to collect this information.

Data

Form Number(s): None.
Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 2,040,000.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 240,000.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

USDA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Francisco Salguero,

Deputy Chief Information Officer.

[FR Doc. 2019–20445 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0052]

Addition of Hong Kong to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Hong Kong to the list of regions that the Animal and Plant Health Inspection Services considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in Hong Kong.

DATES: Hong Kong was added to the APHIS list of regions considered affected with ASF on July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Kordick, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606. Phone: (919) 855–7733; email: *Stephanie.k.kordick@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On May 12, 2019, the veterinary authorities of Hong Kong reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on July 15, 2019, APHIS added Hong Kong to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notifications of that action.

As a result, pork and pork products from Hong Kong, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20522 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0054]

Import Requirements for the Importation of Fresh Unshu Oranges From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared commodity import evaluation documents (CIEDs) relative to the importation into the United States of Unshu oranges from Japan. Currently, Unshu oranges imported into the United States from the islands of Shikoku or Honshu must be fumigated with methyl bromide as a mitigation for mites and mealybugs if the oranges are destined to a port of entry in Arizona, California, Florida, Hawaii, Louisiana, or Texas. Additionally, Unshu oranges from the island of Kyushu are prohibited entry into Arizona, California, Florida, Hawaii, or Texas. Based on the findings of the CIEDs, we are proposing to remove the fumigation requirement for Unshu oranges from the islands of Honshu and Shikoku and to allow Unshu oranges from the island of Kyushu to be imported into any port of entry in the United States (excluding territories). We are making the CIEDs available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0054.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0054* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Senior Regulatory Policy Specialist, RCC, IRM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database (FAVIR) (*https://epermits.aphis.usda.gov/manual/*). It also provides that, if the Administrator

of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Currently, Unshu oranges from Japan are listed in FAVIR as a fruit authorized importation into the United States, if they are produced on the islands of Honshu, Shikoku, or Kyushu.

As general requirements, regardless of the island of Japan where the Unshu oranges were produced:

- The oranges must be commercial consignments.
- Each consignment must be accompanied by a phytosanitary certificate with an additional declaration that the oranges were packed and produced in accordance with the regulations.
- Each consignment must be free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.
- Shipments are prohibited entry into any U.S. territory.
- Each shipment is subject to inspection at the port of entry into the United States.
- Each shipment must be imported under an import permit issued by APHIS.

Additionally, if the oranges are from the islands of Honshu or Shikoku and are destined to a port of entry in Arizona, California, Florida, Hawaii, Louisiana, or Texas, the oranges must be fumigated with methyl bromide as a mitigation for two species of mites (*Eotetranychus asiaticus* and *Eotetranychus kankitus*) and three species of mealybug (*Planococcus lilacinus, Planococcus kraunhiae,* and *Pseudococcus cryptus*). If the oranges are from the island of Kyushu, they are prohibited from being imported into Arizona, California, Florida, Hawaii, or Texas, as a mitigation for the fruit fly *Bactrocera tsuneonis.*

The national plant protection organization (NPPO) of Japan asked that APHIS remove the methyl bromide fumigation requirement for Unshu oranges imported into the United States from the islands of Honshu or Shikoku, on the grounds that the pests the treatment targets are surface feeders and can easily be detected during phytosanitary inspection of the oranges. The NPPO also provided trapping data indicating that *B. tsuneonis* has not been detected on the island of Kyushu since 2016, and requesting that we allow Unshu oranges from that island into all ports of entry in the United States (excluding territories).

In response to these requests, we have prepared two commodity import evaluation documents (CIEDs). One of the CIEDs recommends that Unshu oranges produced on the islands of Honshu or Shikoku do not need to be fumigated with methyl bromide; the other recommends allowing oranges from the island of Kyushu to be imported into all ports of entry in the United States (excluding territories).

Therefore, in accordance with § 319.56–4(c)(3), we are announcing the availability of our CIEDs for public review and comment. These documents, as well as a description of the economic considerations associated with removing the methyl bromide requirement for Unshu oranges from the islands of Honshu and Shikoku and with allowing Unshu oranges from the island of Kyushu to be imported into all ports of entry in the United States (excluding territories), may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding whether to revise the requirements for the importation of Unshu oranges from Japan in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will revise the requirements for the importation of Unshu oranges from Japan as described in this notice.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20531 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0047]

Addition of the Democratic People's Republic of Korea to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added the Democratic People's Republic of Korea (DPRK) to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of the confirmation of ASF in the DPRK.

DATES: The DPRK was added to the APHIS list of regions considered affected with ASF on June 5, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7732; email: *ingrid.kotowski@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/*. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the

region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On May 30, 2019, the veterinary authorities of the Democratic People's Republic of Korea (DPRK) reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on June 5, 2019, APHIS added the DPRK to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as official record and public notification of that action.

As a result of that action, pork and pork products from the DPRK, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20520 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0051]

Addition of Laos to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Laos to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in Laos.

DATES: Laos was added to the APHIS list of regions considered affected with ASF on July 5, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7732; email: *ingrid.kotowski@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On June 20, 2019, the veterinary authorities of Laos reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on July 5, 2019, APHIS added Laos to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result of that action, pork and pork products from Laos, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20521 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0057]

Import Requirements for the Importation of Fresh Sand Pears From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis relative to the importation into the United States of sand pears (*Pyrus pyrifolia*) fruit from Japan. Currently, sand pears may only be imported from certain authorized production areas within Japan. Based on the findings of the analysis, we are proposing to authorize the importation of sand pears from all of Japan, rather than specific areas of production, and to revise the conditions under which sand pears from Japan may be imported into the United States. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0057.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No.

APHIS–2019–0057, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0057* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Senior Regulatory Policy Specialist, RCC, IRM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the new importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database (FAVIR) (*https://epermits.aphis.usda.gov/manual/*). It also provides that, if the Administrator determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk analysis and determination available for public comment.

Sand pears fruit from Japan are currently listed in FAVIR as a fruit authorized importation into the United States, subject to the following phytosanitary measures for shipments to any U.S. State or territory other than Hawaii:

- The sand pears must be produced in one of the following prefectures: Tottori, Nagano, Fukushima, or Ibaraki.
- The sand pears must be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Japan with an additional declaration that the pears were inspected and found free of plant pests, including *Carposina nipponensis,* peach fruit moth, *Adoxophyes orana,* smaller tea tortrix, and *Conogethes punctiferalis,* yellow peach moth.
- The sand pears are subject to inspection at the port of entry into the United States.
- Only commercial consignments of sand pears may be imported into the United States.
- The sand pears must be imported under permit.

Currently, sand pears may be imported into Hawaii under permit, and subject to inspection in Hawaii, without any further phytosanitary requirements. APHIS received a request from the NPPO of Japan to authorize the importation of sand pears from all prefectures of Japan (excluding Amami, Bonin, Ryukyu, Tokara, and Volcano Islands).

In response to Japan's request, we have prepared a pest list regarding the pests of quarantine significance that could follow the pathway of importation of fresh sand pears from Japan into the United States. The pest list identifies the following quarantine pests as potentially following the pathway:

- *Alternaria kikuchiana,* black spot of Japanese pear.
- *Carposina sasaki,* peach fruit moth.
- *Ceroplastes japonicus,* tortoise wax scale.
- *Ceroplastes rubens,* red wax scale.
- *Conogethes punctiferalis,* yellow peach moth.
- *Crisicoccus matsumotoi,* a mealybug.
- *Grapholita inopinata,* Manchurian fruit moth.
- *Hoplocampa pyricola,* pear fruit sawfly.
- *Monilinia fructigena,* a fungal pathogen.
- *Resseliella yagoi,* a gall midge.

Based on the findings of the pest list, a commodity import evaluation document (CIED) was prepared to identify phytosanitary measures that could be applied to the importation of sand pears from Japan to mitigate the risk posed by these pests.

We have concluded that sand pears can safely be imported from all of Japan (excluding Amami, Bonin, Ryukyu, Tokara, and Volcano Islands), using the following phytosanitary measures for imports to any U.S. State or territory other than Hawaii. We would remove prefecture restrictions on the area of production in Japan, and remove the additional declaration on phytosanitary certificates. Requirements for the importation of sand pears to Hawaii would remain unchanged. The proposed requirements are:

- The sand pears must be accompanied by a phytosanitary certificate issued by the NPPO of Japan.
- The sand pears are subject to inspection at the port of entry into the United States.
- Only commercial consignments of Japanese sand pears may be imported into the United States.
- The sand pears must be imported under permit.

Therefore, in accordance with § 319.56–4(c)(3), we are announcing the availability of our pest list and CIED for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh sand pears from all of Japan (excluding Amami, Bonin, Ryukyu, Tokara, and Volcano Islands), may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding whether to revise the requirements for the importation of sand pears from Japan in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will revise the requirements for the importation of sand pears fruit from Japan in accordance with this notice.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20532 Filed 9–20–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest; Alaska; Plan of Operations Amendment 1 for the Kensington Gold Mine

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: In December 2018, the USDA Forest Service (Forest Service), Tongass National Forest, received a proposal from Coeur Alaska, Inc. (Coeur Alaska), the owner/operator of the Kensington Gold Mine (Mine), to amend the 2005 Plan of Operations. This proposed life of mine extension, as described in Coeur Alaska's proposed Plan of Operations Amendment 1 (POA 1), would expand the disturbance area currently approved by the Forest Service under the 2004 Kensington Gold Project Final Supplemental Environmental Impact Statement (SEIS). To assess Coeur Alaska's proposed POA 1, the Forest Service will prepare a new SEIS. This notice advises the public that the Tongass National Forest is gathering information necessary to prepare an SEIS to evaluate the effects of changing the Plan of Operations via Coeur Alaska's proposed POA 1.

DATES: Comments concerning the scope of the analysis must be received by November 7, 2019. The Draft SEIS is expected October 2020 and the Final SEIS is expected July 2021.

ADDRESSES: Comments may be submitted electronically at *https://www.fs.usda.gov/project/?project=55533* or via facsimile to (907) 586–8808. In addition, written comments can be delivered or mailed to: Tongass National Forest, Kensington Gold Mine POA1 SEIS, 8510 Mendenhall Loop Rd., Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Matthew Reece, Minerals Program Manager, Tongass National Forest at the Juneau Ranger District, 8510 Mendenhall Loop Rd., Juneau, Alaska 99801 or by telephone at (907) 586–8800, between 8:00 a.m. and 4:00 p.m., Alaska Standard Time, Monday through Friday.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This SEIS will tier to and incorporate by reference the 1992 Kensington Gold Project Final EIS and the 1997 and 2004 Kensington Gold Project Final SEISs. The 2004 Final SEIS and Record of Decision, along with other supporting documents, are available at: *https://www.fs.usda.gov/project/?project=55533.*

Project Location: The Mine is located at the southern end of the Kakuhan Range off the coastal mountains on the small peninsula formed between Lynn Canal and Berners Bay, on the Juneau Ranger District of the Tongass National Forest. The Mine is located about 45 air miles northwest of Juneau, 35 air miles south of Haines, and within the boundary of the City and Borough of Juneau, Alaska. The Mine is accessible by passenger ferry, cargo barge, floatplane, or helicopter.

Tongass Land and Resource Management Plan (Forest Plan): The primary land use designation in the Forest Plan for the Mine site is Modified Landscape (to provide for natural appearing landscapes while allowing timber harvest). The area also has an overlay designation of Minerals (to encourage mineral exploration and development of areas with high mineral potential).

Purpose and Need for Action

Coeur Alaska is requesting additional tailings, waste rock disposal, and related infrastructure at the Mine to reflect positive exploration results, improved metal prices, and ongoing operational efficiencies. According to Coeur Alaska, these additions would allow for continuous site operations in a safe, environmentally sound, technically feasible, and economically viable manner, while complying with regulatory requirements. The existing tailings and waste rock storage is considered sufficient to provide for the Mine's needs until 2023; proposed activities would extend the mine life by 10 years until 2033. The purpose of this SEIS is for the Forest Service to consider the proposed changes and to determine whether there is a need to amend the Plan of Operations.

Proposed Action

Coeur Alaska has proposed POA 1 to attain a life of mine extension. Through ongoing exploration efforts, additional ore resources have been identified within the Kensington and Jualin deposits at the Mine. Both deposits are currently being mined and the estimated ore production would result in the need for additional tailings and waste rock storage capacity. The proposal to expand the disturbance area authorized under the approved 2005 Plan of Operations by approximately 150 acres and achieve a life of mine extension of about 10 years includes the following main elements:

- Construction of a Stage 4 dam raise of the existing Tailings Treatment Facility, formerly known as Lower Slate Lake, including a causeway between the Tailings Treatment Facility and Upper Slate Lake;
- Relocation of seepage collection sumps, access road, power line, pipelines, and stormwater diversion channels;
- Expansion of three existing Waste Rock Stockpiles: Kensington, Pit #4, and Comet;
- Construction of one additional Waste Rock Stockpile (Pipeline Road);
- Relocation of ancillary facilities including the water treatment plants at the Tailings Treatment Facility area;
- Increase mill production from 2,000 tons per day to 3,000 tons per day to provide operational flexibility and make up for periods of maintenance shutdowns; and
- Construction of access roads to mitigate Slate Creek resident fish spawning habitat losses by constructing deltas and rerouting Fat Rat Creek into South Creek, and culvert replacements to promote fish passage.

In general, POA 1 focuses on proposed operational changes, a new waste rock stockpile facility, and expansions of mine facilities presented in the 2005 Plan of Operations. If approved, POA 1 would supersede the existing Plan of Operations where changes are proposed; however, the approved Plan of Operations would control any items not discussed in POA 1.

Possible Alternatives

A no-action alternative, which represents no changes to the approved 2005 Plan of Operations and serves as the baseline for the comparison among the action alternatives, will be analyzed in addition to the proposed action. Comments we receive in response to this Notice of Intent may identify additional reasonable alternatives.

Lead and Cooperating Agencies

The USDA Forest Service is the lead agency for the proposed action and compliance with the National Environmental Policy Act. The Tongass National Forest has identified multiple agencies with special expertise with respect to the proposed action that could serve as cooperating agencies. The U.S. Army Corps of Engineers has special expertise with assessing impacts to waters of the United States, including wetlands; additionally, a Section 404 of the Clean Water Act permit will be needed from this agency. From the State

of Alaska, at least three departments could be cooperating agencies due to their expertise and involvement in evaluations for this type of permit application. These departments include the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources. Locally, the City and Borough of Juneau could be a cooperating agency as the Mine is within its boundaries and it issues permits for certain facilities at the Mine. The Tongass National Forest will conduct an effort to formally identify cooperating agencies.

Responsible Official

The responsible official for the decision on this project is the Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901.

Nature of Decision To Be Made

The Forest Supervisor is the responsible official for this action and will decide whether to amend the approved Plan of Operations. The decision will be based on information that is disclosed in the Final SEIS. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in deciding whether to amend the Plan of Operations and will state the rationale for the decision in the record of decision.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the SEIS through internal and external input on the issues, impacts, and alternatives to consider. The Forest Service will invite the public to participate in scoping meetings in Juneau and Haines, Alaska. These meetings will be posted on the Forest's website at *https://www.fs.usda.gov/project/?project=55533* and will be advertised in the Juneau Empire and the Ketchikan Daily News, newspapers of record, to announce the date, time, place, and purpose of the public scoping meetings.

Forest Service regulations at 36 CFR 218 subparts A and B, regarding the project-level predecisional administrative review process, apply to projects and activities implementing land management plans that are not authorized under the Healthy Forest Restoration Act. Only individuals or entities who submit timely and specific written comments concerning the project during this or another designated public comment period established by the responsible offical will be eligible to file on objection. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the SEIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Names of commenters and comments received in response to this solicitation will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous commenters will not gain standing to object as defined in 36 CFR 218.2.

Dated: August 15, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–20534 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee (RAC) will meet in Flagstaff, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_page?id=001t0000002JcuiAAC.*

DATES: The meeting will be held on Friday, Sept. 27, 2019, at 9:00 a.m.

All RAC meetings are subject to cancellation. For the status of the meeting prior to attendance, please contact Brady Smith, RAC Coordinator, by phone at 928–527–3490 or via email at *brady.smith@usda.gov.*

ADDRESSES: The meeting will be held at the Coconino National Forest, Supervisor's Office, 1824 South Thompson Street, Flagstaff, Arizona.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Coconino National Forest, Supervisor's Office. Please call ahead at 928–527–3490 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Brady Smith, RAC Coordinator, by phone at 928–527–3490 or via email at *brady.smith@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Select a chairperson and vice-chairperson;
2. Review RAC Guidelines for voting;
3. Review Secure Rural Schools Act reauthorization requirements for funding projects with Title II funds;
4. Review and discuss each project proposal;
5. Hear public comments: Proponents of each project proposal;
6. Approve/Reject project proposals and determine amount of Title II funds that will be allocated to approved projects; and
7. Determine future meeting dates/times/locations.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, Sept. 20, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Brady Smith, RAC Coordinator, 1824 South Thompson Street, Flagstaff, Arizona 86004; by email to *brady.smith@usda.gov,* or via facsimile to 928–527–3620.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Brady Smith, RAC Coordinator, by phone at 928–527–3490 or via email at *brady.smith@usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

Dated: September 5, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–20538 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lyon-Mineral Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lyon-Mineral Resource Advisory Committee (RAC) will meet in Yerington, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_page?id=001t0000002JcuxAAC.*

DATES: The meeting will be held on November 5, 2019, at 1:00 p.m.

All RAC meetings are subject to cancellation. For the status of the meeting prior to attendance, please contact Janette Cutts, Designated Federal Officer, by phone at 760–932–5801 or via email at *janette.cutts@usda.gov*.

ADDRESSES: The meeting will be held at the Lyon County Administration Complex, Commissioners Meeting Room, 27 South Main Street, Yerington, Nevada.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bridgeport Ranger Station, HC62, Box 1000, Bridgeport, California. Please call ahead at 760–932–7070 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janette Cutts, Designated Federal Officer, by phone at 760–932–5801 or via email at *janette.cutts@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss new project proposals; and
2. Receive an update on current and completed projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 22, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Janette Cutts, Designated Federal Officer, Bridgeport Ranger District, HC 62, Box 1000, Bridgeport, California 93517; or by email to *janette.cutts@usda.gov,* or via facsimile to 760–932–5899.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Janette Cutts, Designated Federal Officer, by phone at 760–932–5801 or via email at *janette.cutts@usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

Dated: September 10, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–20536 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou (OR) Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Siskiyou (OR) Resource Advisory Committee (RAC) will meet in Medford, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvCAAS.*

DATES: The meeting will be held on the following dates:

- Wednesday, October 2, 2019, from 9:00 a.m. to 12:00 p.m., and
- Thursday, October 17, 2019, from 9:00 a.m., if needed.

A public notification will be made in local newspapers if a change in meeting date is required.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact Virginia Gibbons, RAC Coordinator, by phone at 541–618–2113 or via email at *vgibbons@fs.fed.us.*

ADDRESSES: The meetings will be held at the Medford Interagency Office, 3040 Biddle Road, Medford, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Medford Interagency Office. Please call ahead at 541–618–2200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons, RAC Coordinator, by phone at 541–618–2113 or via email at *vgibbons@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review, discuss, and finalize recommendations on proposed Title II projects under the current SRS Act reauthorization. This meeting is a follow-up to the RAC meeting conducted on June 12–13, 2019, in order to meet the quorum requirement.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, September 26, 2019, to be scheduled on the agenda, or on a first come-first served basis at the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments

must be sent to Virginia Gibbons, RAC Coordinator, 3040 Biddle Road, Medford, Oregon 97504; by email to *vgibbons@fs.fed.us,* or via facsimile to 541–618–2144.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Virginia Gibbons, RAC Coordinator, by phone at 541–618–2113 or via email at *vgibbons@fs.fed.us.* All reasonable accommodation requests are managed on a case by case basis.

Dated: September 10, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–20450 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lynn Canal-Icy Strait Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Lynn Canal-Icy Strait Resource Advisory Committee (RAC) will meet by teleconference call. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcwQAAS.*

DATES: The meeting will be held on Wednesday, October 23, 2019, at 1:00 p.m. via teleconference call. All RAC meetings are subject to cancellation. For anyone who would like to attend via teleconference call, please visit the website listed above or contact Robin Hasselquist, RAC Coordinator, by phone at 907–789–6212 or via email at *robin.hasselquist@usda.gov.*

For the status of the meeting prior to attendance, please contact Robin Hasselquist, RAC Coordinator, by phone at 907–789–6212 or via email at *robin.hasselquist@usda.gov.*

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Admiralty Island National Monument Ranger District. Please call ahead at 907–789–6212 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robin Hasselquist, RAC Coordinator, by phone at 907–789–6212 or via email at *robin.hasselquist@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Approve previous minutes;

(2) Summarize approved, funded and completed projects since last meeting;

(3) Summarize approved projects that were not funded but can move forward with current funding;

(4) Discuss and agree on a chairperson and vice-chairperson; and

(5) Potentially discuss new projects for future consideration, once project submission forms are completed and funding is available.

The meeting is open to the public. The agenda will include time for people to make oral statement of three minutes or less. Individuals wishing to make an oral statement should request in writing by Wednesday, October 16, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Robin Hasselquist, RAC Coordinator, 8510 Mendenhall Loop Road, Juneau, Alaska 99801; by email to *robin.hasselquist@usda.gov,* or via facsimile 907–586–8808.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Robin Hasselquist, RAC Coordinator, 8510 Mendenhall Loop Road, Juneau, Alaska 99801; by email to *robin.hasselquist@usda.gov,* or via facsimile 907–586–8808. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 5, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–20537 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcvNAAS.*

DATES: The meeting will be held on October 16, 2019, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 or via email at *penny.richardson@usda.gov.*

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center, 50 Main Street, Ketchikan, Alaska. A conference line will be set up for those who would like to listen in by telephone. For the conference call number, please contact Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 or via email at *penny.richardson@usda.gov.*

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ketchikan Misty Fjords Ranger District. Please call ahead at 907–225–2148 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 or via email at *penny.richardson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and
2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make oral statements should request in writing by Wednesday, October 9, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Penny L. Richardson, RAC Coordinator, Ketchikan Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *penny.richardson@usda.gov,* or via facsimile to 907–225–8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accomodation. For access to the facility or proceedings, please contact Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 or via email at *penny.richardson@usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

Dated: September 16, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–20539 Filed 9–20–19; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Colorado Advisory Committee to the Commission will convene by conference call at 2:00 p.m. (MDT) on Friday, October 4, 2019. The purpose of the meeting is to discuss next steps post-report publication.

DATES: Friday, October 4, 2019, at 2:00 p.m. (MDT).

Public Call-In Information: Conference call number: 1–800–367–2403 and conference call ID: 6975626.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–367–2403 and conference call ID: 6975626.

Please be advised that, before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number provided.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–367–2403 and conference call 6975626.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzksAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda: Friday, October 4, 2019; 2:00 p.m. (MDT)

I. Roll Call
II. Discuss Next Steps Post-Report Publication
III. Other Business
IV. Open Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: September 17, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20469 Filed 9–20–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene by conference call, at 11:30 a.m. (EDT) Thursday, October 3, 2019. The purpose of the planning meeting is to continue project planning for the scheduled briefing meeting (hearing) on the Committee's civil rights project examining the intersection of homelessness, mental health and the criminal justice system, including a review of the DC Mental Health Court. The briefing meeting is scheduled in DC for November 7, 2019 at the agency's offices in downtown Washington, DC.

DATES: Thursday, October 3, 2019 at 11:30 a.m. (EDT).

Public Call-In Information: Conference call number: 1–877–260–1479 and conference call ID number: 1929821.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the

discussion by calling the following toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821.

Members of the public are invited to make statements during the Public Comments section of the meeting or to submit written comments. The comments must be received in the regional office by Monday, November 4, 2019. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlKAAQ.* Please click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Thursday, October 3, 2019, at 11:30 a.m. (EDT)

I. Welcome and Rollcall
II. Discuss Plans for November 7, 2019 Hearing
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: September 18, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20499 Filed 9–20–19; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Friday, October 4, 2019. The purpose of the meeting is to discuss next steps after publication on the agency's website of the Committee's report on the collateral consequences that a criminal record has on West Virginians access to employment, housing, occupational licenses and public benefits.

DATES: Friday, October 4, 2019 at 12:00 p.m. (EST).

Public Call-In Information: Conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218. Please be advised that before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

October 4, 2019 at 12:00 p.m. (EST)

I. Rollcall
II. Welcome
III. Planning Meeting
—Discuss next steps following publication of the Committee's civil rights project report on the agency's website.
IV. Other Business
V. Next Meeting
VI. Open Comments
VII. Adjourn

Dated: September 18, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20500 Filed 9–20–19; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Vermont Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Vermont Advisory Committee to the Commission

will convene by conference call at 12:00 p.m. (EDT) on Monday, October 7, 2019. The purpose of the meeting is for planning.

DATES: Monday, October 7, 2019, at 12:00 p.m. EDT.

Public Call-In Information: Conference call-in number: 1–800–367–2403 and conference call 9066236.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call 9066236. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference call 9066236.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmXAAQ,;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Monday, October 7, 2019 at 12:00 p.m. (EDT)

- Rollcall
- Planning
- Next Steps
- Other Business
- Open Comment
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: September 17, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20498 Filed 9–20–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–183–2019]

Foreign-Trade Zone 26—Atlanta, Georgia; Application for Subzone Patterson Pump Company Toccoa, Georgia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting subzone status for the facility of Patterson Pump Company, located in Toccoa, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on September 17, 2019.

The proposed subzone (20 acres) is located at 2129 Ayersville Road, Toccoa, Georgia. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–53–2019). The proposed subzone would be subject to the existing activation limit of FTZ 26.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 4, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 18, 2019.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: September 17, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–20514 Filed 9–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2019]

Foreign-Trade Zone (FTZ) 145—Shreveport, Louisiana; Notification of Proposed Production Activity; Benteler Steel/Tube Manufacturing Corp.; (Seamless Quality Steel Tubes); Shreveport, Louisiana

Benteler Steel/Tube Manufacturing Corp. (Benteler) submitted a notification of proposed production activity to the FTZ Board for its facility in Shreveport, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 13, 2019.

The Benteler facility is located within FTZ 145. The facility is used for production of seamless quality steel tubes. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Benteler from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Benteler would be able to choose the duty rates during customs entry procedures that apply to: Line pipe; drill pipe; casing, tubing and drill pipe; boiler, heat exchanger and line pipe; tubing, casing and heat exchangers; hollow carriers for perforating guns; couplings; and, coupling blanks (duty

rate: Duty-free). Benteler would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Non-alloy billets; alloy billets; hollow carriers for perforating guns; drill pipe; casing, tubing and drill pipe; and, boiler, heat exchanger and line pipe (duty rate: Duty-free). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 4, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: September 17, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–20517 Filed 9–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2019]

Foreign-Trade Zone 265—Conroe, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Conroe, grantee of FTZ 265, requesting authority to expand FTZ 265 to include additional acreage in Conroe, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 16, 2019.

FTZ 265 was approved on September 16, 2005 (Board Order 1410, 70 FR 57557–57558, October 3, 2005). The zone currently consists of the following site: *Site 1* (438 acres)—Conroe Park North located on FM 3083 (one mile east of Interstate 45) in Conroe.

The applicant is requesting authority to expand Site 1 of the zone to include an additional 1,046 acres at the industrial park. No authorization for production activity is being requested at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 22, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 9, 2019.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 17, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–20516 Filed 9–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2019]

Foreign-Trade Zone (FTZ) 281—Miami, Florida; Notification of Proposed Production Activity; South Florida Lumber Company; (Steel Frames); Medley, Florida

Miami-Dade County, grantee of FTZ 281, submitted a notification of proposed production activity to the FTZ Board on behalf of South Florida Lumber Company (South Florida Lumber), located in Medley, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 9, 2019.

The South Florida Lumber facility is located within FTZ 281. The facility is used for the production of steel frames as structural support for building construction. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt South Florida Lumber from customs duty payments on the foreign-status materials/components used in export production (estimated sixty percent of production). On its domestic sales, for the foreign-status materials/components noted below, South Florida Lumber would be able to choose the duty rates during customs entry procedures that apply to angles, shapes and sections of iron and nonalloy steel, metal studs, and steel frames (duty-free). South Florida Lumber would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include steel in primary form and flat rolled products of iron or nonalloy steel (duty-free). The request indicates that steel is subject to an antidumping/countervailing duty (AD/CVD) order if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that steel is subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is November 4, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: September 17, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–20518 Filed 9–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Water Security Grand Challenge Resource Recovery Prize

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment providing information and feedback on the design of a potential prize competition with a goal of increasing resource recovery from municipal wastewater treatment plants across the United States, and in so doing, lower the ultimate cost of treatment by extracting additional value from the wastewater (*i.e.,* improve energy efficiency). Through this potential prize, DOE would seek novel, systems-based solutions from multidisciplinary teams to implement resource recovery at small-to-medium-sized wastewater treatment plants. Specifically, the intent is to encourage teams of wastewater treatment plants, engineering and design firms, technology developers, resource customers (*e.g.,* farmers, electric and gas utilities), and others to develop holistic community and/or watershed-based resource recovery plans for their respective wastewater treatment systems. Input from this RFI may be used to further develop the competition objectives, rules, metrics, and incentives.

DATES: Responses to the RFI must be received by October 23, 2019, no later than 5:00 p.m. (ET).

ADDRESSES: Interested parties are to submit comments electronically to *WaterResourceRecoveryPrize@ee.doe.gov.* Include Water Security Grand Challenge Resource Recovery Prize in the subject of the title. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Question may be addressed to John Smegal, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: 202–586–2222. Email: *WaterResourceRecoveryPrize@ee.doe.gov.* Further instruction can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION:

Background

The DOE-led Water Security Grand Challenge (''the Challenge'') aims to advance transformational technology and innovation to meet the global need for safe, secure, and affordable water using a coordinated suite of prizes, competitions, early-stage research and development, and other programs.[1] The Challenge consists of five goals; this RFI focuses on the goal of doubling resource recovery from municipal wastewater treatment plants by 2030.

Wastewater treatment plants purchase about $2 billion of electricity each year and face more than $200 billion in future capital investment needs to meet water quality objectives.[2] These expenses can stress municipal budgets. For example, energy consumption at wastewater treatment plants can account for a third or more of municipal energy bills.[3] Energy costs are expected to increase over time [4] and affect affordability of water for businesses and consumers.[5] Disposal of residual biosolids from water treatment is another significant cost for municipalities. Wastewater treatment plants can address these challenges by recovering resources and turning them into marketable products. This can create new revenue streams for upgrading water treatment infrastructure, particularly in rural communities, reduce nutrient pollution, and provide new sources of alternative water supplies. Recoverable resources include energy that can be used on-site or sold; nutrients such as phosphorous and nitrogen that can be used as fertilizer; and clean water that can be reused for agricultural, industrial, and potable purposes. When the value of the recovered resources more than offsets the cost of recovery, the overall cost of wastewater treatment is reduced. In addition, resource recovery contributes to system-level energy efficiency because recovering energy from wastewater reduces the amount of grid electricity required to operate the wastewater treatment plant. Moreover, recovered water (treated wastewater) can offer a substitute for water sources with a higher level of embedded energy (including desalinated water and water that is conveyed over a long distance) for industrial, agricultural, and municipal use. Recovered nutrients (*e.g.,* nitrogen, phosphorus) can be a less energy-intensive substitute for fertilizer on agricultural land.

To make progress on the goal of doubling resource recovery from municipal wastewater facilities, DOE is considering a potential prize competition that seeks to increase resource recovery from municipal wastewater treatment plants across the United States. This prize is intended to target small-to-medium-sized wastewater treatment plants (*e.g.,* facilities with flows on the order of up to 50 million gallons per day), as larger facilities are more likely to be already engaged in or developing resource recovery strategies. The envisioned outcome of this prize competition is the development of novel, system-wide solutions that leverage existing resource recovery technologies to improve resource recovery in these small-to-medium-sized facilities and also contribute to energy efficiency at the facility and/or system level.

Competition participants are expected to be multi-disciplinary teams of stakeholders that will develop holistic, community- or watershed-based resource recovery plans. Teams are likely to be comprised of wastewater treatment plants, engineering and design firms, technology developers, resource customers (such as farmers, electric and gas utilities), and others.

As currently envisioned, the prize would consist of two phases. In the first phase, teams would submit a high-level facility schematic and business plan that demonstrates the cost-effectiveness and viability of their resource recovery plan.[6] Successful plans would demonstrate how the approach reaches threshold levels on certain resource recovery metrics, while contributing to energy efficiency at the facility and/or

[1] *https://www.energy.gov/eere/water-security-grand-challenge.*

[2] Environmental Protection Agency (EPA). Clean Watersheds Needs Survey 2012, Report to Congress. January 2016. *https://www.epa.gov/sites/production/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf.* Electricity dollar value derived from electricity consumption estimates contained in Arzbaecher, C., K. Parmenter, R. Ehrhard, and J. Murphy. 2013. *Electricity Use and Management in the Municipal Water Supply and Wastewater Industries.* Palo Alto, CA: Electric Power Research Institute and Water Research Foundation. *http://www.waterrf.org/PublicReportLibrary/4454.pdf.*

[3] EPA, Water and Energy Efficiency at Utilities and in the Home, *https://www.epa.gov/sustainable-water-infrastructure/water-and-energy-efficiency-utilities-and-home.*

[4] Arzbaecher, et al.

[5] DOE. Water and Wastewater Annual Price Escalation Rates for Selected Cities across the United States. September 2017. *https://www.energy.gov/sites/prod/files/2017/10/f38/water_wastewater_escalation_rate_study.pdf.*

[6] Provisions for safe guarding sensitive or proprietary information submitted in response to the prize competition will be detailed within the rules and procedures for the prize to be published subsequent to this RFI.

system level as discussed further below. Plans meeting this threshold would then be judged on their innovation and replicability. At the end of phase one, DOE anticipates selecting multiple teams for relatively small awards (*e.g.,* 10 selections receiving $50,000 each). DOE may also publish selected teams' plans on a DOE website. DOE expects to provide teams about six months from prize announcement until phase one applications are due.

Teams selected at the end of phase one would have the opportunity to progress into the second phase of the competition. Phase two of the competition would require the submission of detailed and technically rigorous plans that demonstrate how teams would finance and construct their resource recovery solutions, with such plans supported by quantitative analysis and/or modelling. In phase two, successful plans would be judged by modeled achievement of resource recovery metrics as well as by contributions to energy efficiency, financial viability, technical and engineering rigor, and the broad replicability of the plan. At the end of phase two, a smaller number of teams would be selected for higher-dollar prizes (*e.g.,* two selections receiving $250,000 each). DOE expects to provide teams about a year from phase one selection to submit final phase two materials.

As part of the financial viability aspect of phase two, DOE anticipates aligning phase two submission requirements with the application requirements of public financing programs (*e.g.,* from the U.S. Environmental Protection Agency's Water Infrastructure Finance and Innovation Act (WIFIA) program and Clean Water State Revolving Fund, among others), enabling participants to be well-positioned for applying for these funding sources.

Quantitative metrics would play a critical role in the judging process of both phases of the competition. DOE envisions applicants will need to meet a minimum threshold of resource recovery for one or more resources (*i.e.,* energy, clean water, and/or nutrients). This threshold could be expressed as a recovery rate (*i.e.,* the percent of resource recovered relative to the total amount of that resource present in influent) or as an improvement rate (*i.e.,* an increase in recovery rate over some baseline). Additional metrics or guidance would be developed to assess submissions on other criteria beyond these thresholds, including energy efficiency, innovation, replicability, and technical and engineering rigor. In phase two, financial metrics will also be used for judging, which may include levelized cost of avoided disposal, net present value of recovery streams, lifecycle costs of recovery, or others. To ensure diverse solutions applicable across a range of facility types, DOE may also introduce other factors to judging, such as geographic diversity of applicants, facility size, category of resources recovered, and treatment technologies used.

Request for Information Categories and Questions

Category 1: Overall Prize Concept and Objectives

1. Can a prize-based approach contribute to achieving the goal of increasing resource recovery across small-to-medium-sized wastewater treatment plants? If so, what aspects of a prize in particular can help achieve this goal? If not, what other approaches could be considered? Are there other complementary activities that can be pursued to increase the impact of the prize?

2. Are there other, similar initiatives that could help inform this prize?

3. One of DOE's primary objectives with a prize is to stimulate the development of multi-stakeholder, systems-based solutions. Please share any examples of these types of solutions you have observed as well as what you believe advanced these solutions. Conversely, what barriers exist to the development and execution of these types of collaborative integrative solutions?

4. What resource recovery technologies do you believe are most promising in the context of this prize, and what challenges exist in integrating these technologies into wastewater treatment plants? Are there promising systems configurations that incorporate multiple technologies?

5. What state and local policies are effective at enabling the acceleration of resource recovery at wastewater facilities? Conversely, what regulatory and policy barriers prevent acceleration of resource recovery?

6. What barriers prevent potential resource customers from purchasing and using resources from local wastewater treatment plants?

7. What stakeholders are important to engage as partners or competitors?

Category 2: Prize Design

1. Is the proposed two-phase prize concept the most effective way of ensuring actionable ideas emerge from broad stakeholder teams? Is the proposed timeline (*i.e.,* about six months for phase one and a year for phase two) sufficient to ensure DOE receives thoughtful, well-crafted application materials?

2. Does the lack of a demonstration phase in the current proposed prize design limit the effectiveness of the approach? How could the design of the prize competition be enhanced so that participants are best-positioned to implement their proposed solutions after the competition is over?

3. Are the proposed incentive levels (*i.e.,* $50,000 for teams selected in phase one; $250,000 for teams selected in phase two) sufficient to incent participation?

4. Is 50 million gallons/day an appropriate cutoff for competitor facility size?

5. How can the prize competition be structured such that the lessons learned from the projects that are selected through the competition are generalizable and useful to other wastewater treatment plants and communities? How can the prize be designed to generate replicable outcomes?

6. A key objective of the prize is to position participants to successfully apply for financing from other public agencies. Does aligning phase two application requirements with the common application requirements from such programs help to achieve this goal? Are there other ways of achieving this? What financing programs are important to consider?

7. Please share any other perspectives on details of the prize design.

Category 3: Criteria and Metrics

1. As currently envisioned, the prize targets the recovery of energy, clean water, and nutrients. Are there other resources that are being recovered or could be recovered from municipal wastewater that should be included in this prize?

2. Within the categories of recoverable resources proposed for inclusion in the prize, are there industry-standard quantitative metrics that measure the level of resource recovery?

3. As discussed above, DOE may require applicants to demonstrate how the proposed plan reaches threshold levels on resource recovery metrics. For these ''threshold levels,'' is a fixed recovery rate or improvement rate more appropriate as a threshold to measure resource recovery for small-to-medium-sized wastewater treatment plants?

4. What are ambitious but achievable targets for the metrics identified in questions two and three in this section at an individual plant level, *i.e.,* what are the ''threshold levels'' that

applicants should need to achieve at a minimum to be considered for selection?

5. What are ambitious but achievable targets for plant-level and/or system-level energy efficiency improvements for recovery of clean water, nutrients and other resources?

6. What metrics are appropriate to assess the financial viability of a submission as part of phase two judging?

7. How should DOE assess the innovativeness of prize applications?

Request for Information Response Guidelines

Responses to this RFI must be submitted electronically to *WaterResourceRecoveryPrize@ee.doe.gov* no later than 5:00 p.m. (ET) on October 23, 2019. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and no more than 20 pages in length, 12 point font, 1 inch margins. Only electronic responses will be accepted.

Please identify your answers by responding to a specific question or topic if applicable. Respondents may answer as many or as few questions as they wish.

EERE will not respond to individual submissions or publish publicly a compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This is solely a request for information and not an announcement for a prize competition. EERE is not accepting applications or submissions for a potential prize competition. If EERE pursues the potential prize competition, it would be announced through a separate solicitation.

Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on August 30, 2019.

Valri Lightner,

Deputy Director, Advanced Manufacturing Office.

[FR Doc. 2019–20541 Filed 9–20–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge; Meeting; Correction

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting: correction.

SUMMARY: On September 17, 2019, the Department of Energy published a notice of open meeting announcing a meeting on October 9, 2019, of the Environmental Management Site-Specific Advisory Board, Oak Ridge. This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; Email: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 17, 2019, in FR Doc. 2019–20114, on page 48921, please make the following correction:

In that notice under *Tentative Agenda,* third column, first paragraph, the presentation topic has been changed. The original presentation topic was Processing of Uranium 233 Materials. The new presentation topic is Groundwater Update.

Signed in Washington, DC, on September 18, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–20470 Filed 9–20–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14992–000]

Pumped Hydro Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 8, 2019, Pumped Hydro Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a pumped storage project in Coconino County, Arizona. On August 1, 2019, the applicant filed a revised application for the project to address Commission staff's June 19, 2019 comments. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Navajo Nation Salt Trail Canyon Pumped Storage Project would consist of the following: (1) A new 240-foot-high, 500-foot-long upper dam and reservoir; (2) a new 140-foot-high, 1,000-foot-long lower dam and reservoir; (3) six 250- megawatt, turbine-generator units, for a total installed capacity of 1,500 megawatts; (4) a new 20-mile-long, 500-kilovolt transmission line from the powerhouse to the existing Moenkopi switchyard; and (5) appurtenant facilities. The proposed project would have an average annual generation of 3,300 gigawatt-hours.

Applicant Contact: Steve Irwin, Pumped Hydro Storage, LLC, 6514 S

41st Lane, Phoenix, AZ 85041; phone: (602) 696–3608.

FERC Contact: Tim Konnert; phone: (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14992–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14992) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20503 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings; Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: September 25, 2019.

*NOTE—The Closed meeting will follow the Joint meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission.[1]

PLACE: U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

Chairman Chatterjee and Commissioners Glick, and McNamee voted to hold a closed meeting on September 25, 2019. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street NE, Washington, DC 20426.

The Chairman and the Commissioners, the General Counsel, and members of their staff, members of the Nuclear Regulatory Commission, and members of their staff are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Issued: September 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20626 Filed 9–19–19; 11:15 am]

BILLING CODE 6717–01–P

[1] *See* Notice of Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission, September 18, 2019.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14990–000]

Pumped Hydro Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 3, 2019, Pumped Hydro Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a closed loop pumped storage project in Maricopa County, Arizona. On August 1, 2019, the applicant filed a revised application for the project to address Commission staff's June 19, 2019 comments. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Salt River Project Indian Spring Pumped Storage Project would consist of the following: (1) A new 240-foot-high, 1,000-foot-long upper dam and reservoir; (2) a new 260-foot-high, 2,200-foot-long lower dam and reservoir; (3) six 250-megawatt, turbine-generator units, for a total installed capacity of 1,500 megawatts; (4) a new 200-foot-long, 345-kilovolt transmission line from the powerhouse to an existing grid interconnection point; and (5) appurtenant facilities. The proposed project would have an average annual generation of 3,285 gigawatt-hours.

Applicant Contact: Steve Irwin, Pumped Hydro Storage, LLC, 6514 S 41st Lane, Phoenix, AZ 85041; phone: (602) 696–3608.

FERC Contact: Tim Konnert; phone: (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14990–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14990) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20495 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14944–000]

Pumped Hydro Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 10, 2019, Pumped Hydro Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a pumped storage project on the Little Colorado River in Coconino County, Arizona. On August 1, 2019, the applicant filed a revised application for the project to address Commission staff's June 19, 2019 comments. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Navajo Nation Little Colorado River Pumped Storage Project would consist of the following: (1) A new 200-foot-high, 3,200-foot-long upper dam and reservoir; (2) a new 150-foot-high, 1,000-foot-long lower dam and reservoir; (3) eight 400-megawatt, turbine-generator units, for a total installed capacity of 3,200 megawatts; (4) two new 22-mile-long, 500-kilovolt transmission lines from the powerhouse to an existing grid interconnection point; and (5) appurtenant facilities. The proposed project would have an average annual generation of 8,500 gigawatt-hours.

Applicant Contact: Steve Irwin, Pumped Hydro Storage, LLC, 6514 S 41st Lane, Phoenix, AZ 85041; phone: (602) 696–3608.

FERC Contact: Tim Konnert; phone: (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* DATED: September 17, 2019. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14994–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14994) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20502 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–509–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on September 4, 2019, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP19–509–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a certificate of public convenience and necessity to excavate, elevate, and replace certain segments of four different natural gas pipelines (Lines 10, 15, 25, and 30) and appurtenant facilities located in Marshall County, West Virginia. The Marshall County Mine Panel 19E Project is designed to maintain the safe and efficient operation of Texas Eastern's pipeline facilities at certificated design capacities for the duration of planned longwall mining activities in the area beneath Texas Eastern's pipelines. Texas Eastern estimates the cost of the project to be approximately $38 million and proposes to re-install the pipeline belowground after subsidence has stabilized and the 2020–2021 heating season has ended, all as more fully described in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642 Houston, Texas 77251–1642, by telephone at (713) 627–4102, or by email *lisa.connolly@enbridge.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list

maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on October 8, 2019.

Dated: September 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20506 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–30–000]

Commission Information Collection Activities (FERC–920); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–920 [Electric Quarterly Reports (EQR)] to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously published a Notice in the **Federal Register** on July 8, 2019 requesting public comments. The Commission received no comments and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by October 23, 2019.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0255, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–30–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–920 [Electric Quarterly Reports (EQR)].

OMB Control No.: 1902–0255.

Abstract: The Commission originally set forth the EQR filing requirements in Order No. 2001 (Docket No. RM01–8–000, issued April 25, 2002, at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=2270047*). Order No. 2001 required public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services.[1] The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales, while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c) to have rates on file in a convenient form and place. As noted in Order No. 2001, the EQR data is designed to ''provide greater price

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 73 FR 65526 (Nov. 4, 2008), 125 FERC ¶ 61,103 (2008).

transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices.''

Since issuing Order No. 2001, the Commission has provided guidance and refined the reporting requirements, as necessary, to reflect changes in the Commission's rules and regulations.[2] The Commission also adopted an Electric Quarterly Report Data Dictionary, which provides in one document the definitions of certain terms and values used in filing EQR data.[3]

To increase transparency broadly across all wholesale markets subject to the Commission's jurisdiction, the Commission issued Order No. 768 in 2012.[4] Order No. 768 required market participants that are excluded from the Commission's jurisdiction under the Federal Power Act section 205 (non-public utilities) and have more than a *de minimis* market presence to file EQRs with the Commission. In addition, Order No. 768 revised the EQR filing requirements to build upon the Commission's prior improvements to the reporting requirements and further enhance the goals of providing greater price transparency, promoting competition, instilling confidence in the fairness of the markets, and providing a better means to detect and discourage anti-competitive, discriminatory, and manipulative practices.

EQR information allows the public to assess supply and demand fundamentals and to price interstate wholesale market transactions. This, in turn, results in greater market confidence, lower transaction costs, and ultimately supports competitive markets. In addition, the data filed in the EQR strengthens the Commission's ability to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act. Without this information, the Commission would lack some of the data it needs to examine and approve or modify electric rates.

Type of Respondent: Public utilities, and non-public utilities with more than a *de minimis* market presence.

Estimate of Annual Burden:[5] The Commission estimates the annual public reporting burden for the information collection as:

FERC–920: ELECTRIC QUARTERLY REPORTS (EQR)

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hrs. & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
2,595	4	10,380	18.1 hrs.; $1,448	187,878 hrs.; $15,030,240

Dated: September 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20515 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnline Support@*

[2] *See, e.g., Revised Public Utility Filing Requirements for Electric Quarterly Reports,* 124 FERC ¶ 61,244 (2008) (providing guidance on the filing of information on transmission capacity reassignments in EQRs); *Notice of Electric Quarterly Reports Technical Conference,* 73 FR 2477 (Jan. 15, 2008) (announcing a technical conference to discuss changes associated with the EQR Data Dictionary).

[3] Order No. 2001–G, 120 FERC ¶ 61,270 (2007).

[4] Order No. 768, 77 FR 61896 (Oct. 11, 2012), FERC Stats. & Regs. ¶ 31,336 (2012).

[5] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

The cost is based on FERC's 2019 average FTE (full-time equivalent) cost (wages plus benefits) of $80.00/hour. The Commission staff believes the FERC FTE cost for wages plus benefits is representative of the corresponding cost for the industry respondents.

ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
P–14227–003	8–28–2019	South West Riverside County Fire Safe Council.
EL16–49–000	9–6–2019	Electric Power Supply Association.
EL18–178–000		
CP18–548–000	9–10–2019	Eastern Shore Natural Gas Company.
Exempt:		
EL16–49–000	8–29–2019	U.S. Senate.[1]
EL18–178–000		
P–14227–003	9–10–2019	Assembly California Legislature.[2]

Dated: September 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20496 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD19–20–000 and ER02–2001–000]

Electric Quarterly Report Users Group Meeting and Electric Quarterly Reports; Notice of Electric Quarterly Report Users Group Meeting

Take notice that on December 4, 2019 staff of the Federal Energy Regulatory Commission (Commission) will hold an Electric Quarterly Report (EQR) Users Group meeting. The meeting will take place from 1:00 p.m. to 5:00 p.m. (EST) in Hearing Room 1 at 888 First Street NE, Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available via webcast.

This meeting provides a forum for dialogue between Commission staff and EQR users to discuss potential improvements to the EQR program and the EQR filing process. Prior to the meeting, staff would like input on discussion topics. Individuals may suggest agenda topics for consideration by emailing *EQRUsersGroup@ferc.gov.*

Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting. An agenda of the meeting will be provided in a subsequent notice.

Due to the nature of the discussion, those interested in participating are encouraged to attend in person. All interested persons (whether attending in person or via webcast) are asked to register *http://www.ferc.gov/whats-new/registration/12-04-19-form.asp.* There is no registration fee. Anyone with internet access can listen to the meeting by navigating to *www.ferc.gov's* Calendar of Events, locating the EQR Users Group Meeting on the Calendar, and clicking on the link to the webcast. The webcast will allow persons to listen to the technical conference and they can email questions during the meeting to *EQRUsersGroup@ferc.gov.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the EQR Users Group meeting, please contact Jeff Sanders of the Commission's Office of Enforcement at (202) 502–6455, or send an email to *EQRUsersGroup@ferc.gov.*

Dated: September 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20504 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–183–000.
Applicants: Airport Solar LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Airport Solar LLC.
Filed Date: 9/17/19.
Accession Number: 20190917–5065.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: EG19–184–000.
Applicants: Heart of Texas Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Heart of Texas Wind, LLC.
Filed Date: 9/17/19.
Accession Number: 20190917–5069.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: EG19–185–000.
Applicants: Isabella Wind, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Isabella Wind, LLC.
Filed Date: 9/17/19.
Accession Number: 20190917–5073.
Comments Due: 5 p.m. ET 10/8/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1928–002.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3290R2 Sholes Wind GIA—Amended Filing to be effective 4/25/2019.
Filed Date: 9/16/19.
Accession Number: 20190916–5132.
Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2446–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–09–17_SA 3332, Southern Indiana Gas & Electric-OSER 2nd Sub GIA (J783) to be effective 7/10/2019.
Filed Date: 9/17/19.
Accession Number: 20190917–5094.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2448–000.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.
Description: Supplement to July 24, 2019, Midcontinent Independent System Operator, Inc. tariff filing (Replacement Tab C ? Revised Exhibit B).
Filed Date: 9/16/19.
Accession Number: 20190916–5182.

[1] Senators Charles Shumer, Richard Durbin, Thomas Carper, Christopher Coons, Benjamin Cardin, Chris Van Hollen, Cory Booker, Sheldon Whitehouse, Brian Schatz, and Robert Casey Jr.

[2] Assemblywoman, Melissa A. Melendez, District 67.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2508–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3215R6 People's Electric Cooperative NITSA NOA—Amended to be effective 7/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5107.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2817–000.

Applicants: FirstEnergy Solutions Corp.

Description: Compliance filing: Informational Filing re Planned Transfer [original record in ER15–1510–002] to be effective N/A.

Filed Date: 9/16/19.

Accession Number: 20190916–5164.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2818–000.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Baseline eTariff Filing: Formula Rate Filing to be effective 11/15/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5172.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2819–000.

Applicants: Sierra Pacific Power Company.

Description: Initial rate filing: Service Agreement No. 19–00049 to be effective 11/16/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5173.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2820–000.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Baseline eTariff Filing: Initial Filing of Rate Schedules FERC Nos. 1 through No. 11 to be effective 11/15/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5176.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2821–000*; TS19–4–000.*

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Request for Waiver of Open-Access Requirements of Order Nos. 888, et al. of Upper Missouri G. & T. Electric Cooperative, Inc.

Filed Date: 9/16/19.

Accession Number: 20190916–5185.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: ER19–2822–000.

Applicants: Airport Solar LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5063.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2823–000.

Applicants: Isabella Wind, LLC.

Description: Baseline eTariff Filing: Isabella Wind, LLC MBR Application Filing to be effective 11/15/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5090.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2824–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–09–17_SA 3180 Dunns Bridge Solar-NIPSCO 1st Rev GIA (J643 J847) to be effective 8/30/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5095.

Comments Due: 5 p.m. ET 10/8/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–54–000.

Applicants: Georgia Power Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Georgia Power Company.

Filed Date: 9/17/19.

Accession Number: 20190917–5077.

Comments Due: 5 p.m. ET 10/8/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20505 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1560–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–14 to be effective 11/1/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5040.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1561–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–15 to be effective 11/1/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5041.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1562–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–16 to be effective 11/1/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5045.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1563–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–16 to be effective 11/1/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5049.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1564–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–17 to be effective 11/1/2019.

Filed Date: 9/16/19.

Accession Number: 20190916–5050.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1565–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091619 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–18 to be effective 11/1/2019.

Filed Date: 9/16/19.
Accession Number: 20190916–5051.
Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1566–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO SWN Amendments to be effective 9/16/2019.
Filed Date: 9/16/19.
Accession Number: 20190916–5097.
Comments Due: 5 p.m. ET 9/30/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2019.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2019–20497 Filed 9–20–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10000–19–OLEM]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs for Fiscal Year 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state and tribal response programs. These response programs generally address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. For Fiscal Year (FY) 2020, EPA will consider grant requests up to a maximum of $1.0 million per state or tribe. This document announces the availability of guidance that will assist states and tribes in the development and submission of grant applications and the use of Fiscal Year 2020 section 128(a) funds.

DATES: The FY 2020 grant funding guidance is applicable as of October 1, 2019. EPA expects to make non-competitive grant awards to states and tribes which apply during FY 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 566–2745.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this action if you administer a State or tribal response program that oversees assessment and cleanup activities at brownfield sites across the country.

B. How can I get copies of the grant funding guidance and other related information?

1. Docket. The docket for this action, identified by docket identification (ID) number EPA–HQ–OLEM–2019–0540, is available online at *https://www.regulations.gov* or in person at the Office of Land and Emergency Management Docket (OLEM Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OLEM Docket is (202) 566–0270. Please review the visitor instructions and additional information about the docket that is available at *https://www.epa.gov/dockets.*

2. Electronic access. To access the grant funding guidance on EPA's website, please go to *https://www.epa.gov/brownfields/types-brownfields-grant-funding.*

II. Authority

CERCLA section 128(a) (42 U.S.C. 9628(a)) authorizes a noncompetitive $50 million grant program to establish and enhance state and tribal response programs. CERCLA section 128(a)(1)(B)(ii)(III) authorizes a noncompetitive $1.5 million grant program to assist small communities, Indian tribes, rural areas, or disadvantaged areas to carry out CERCLA section 104(k)(7) (42 U.S.C. 9604(k)(7)) (*i.e.,* by providing training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation).

III. Background

1. General. State and tribal response programs oversee assessment and cleanup activities at brownfield sites across the country. The depth and breadth of these programs vary. Some focus on CERCLA related activities, while others are multi-faceted, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). Many states also offer accompanying financial incentive programs to spur cleanup and redevelopment. In enacting the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118, 115 Stat. 2356), which added section 128 to CERCLA, Congress recognized the value of state and tribal response programs in cleaning up and redeveloping brownfield sites. Section 128(a) recognizes the response programs' critical role in overseeing cleanups and strengthens EPA's partnerships with states and tribes.

CERCLA section 128(a) response program grants are funded with categorical State and Tribal Assistance Grant (STAG) appropriations. Categorical grants are issued by Congress to fund state and local governments for narrowly defined purposes. This funding is intended for those states and tribes that have the required management and administrative capacity within their government to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the program establishes and maintains a public record of sites addressed.

Section 128(a) cooperative agreements are awarded and administered by the EPA regional offices. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. Subject to the

availability of funds, EPA regional personnel will provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

2. Catalogue of Federal Domestic Assistance (CFDA) and EPA Funding Opportunity Number (FON). The CFDA entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. The FON for FY 2020 section 128(a) funds is EPA–CEP–02. This grant program is eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 Subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under CERCLA section 104(k)(3) or of funds received for a Small Technical Assistance Grant under CERLCA section 128(a)(I)(B)(ii)(III); or purchase environmental insurance or developing a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

3. Application period. Requests for funding will be accepted from October 1, 2019 through December 6, 2019. Requests EPA receives after December 6, 2019 will not be considered for FY 2020 funding. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their respective Regional EPA Brownfields contacts, identified in Table 1, prior to submitting their funding request. EPA will consider funding requests up to a maximum of $1.0 million per state or tribe for FY 2020.

Requests submitted by the December 6, 2019 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final funding allocation determinations are made. As in previous years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions and unexpended balances are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. Also, EPA will prioritize funding for recipients establishing their response programs.

TABLE 1—EPA REGIONAL BROWNFIELDS CONTACTS FOR STATE AND TRIBAL RESPONSE PROGRAMS

Regional office	State response program contact	Tribal response program contact
Region 1 (CT, ME, MA, NH, RI, VT).	James Byrne, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone: (617) 918–1389; Fax: (617) 918–1294.	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone: (617) 918–1248; Fax: (617) 918–1294.
Region 2, (NJ, NY, PR, VI) ..	John Struble, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: (212) 637–4291; Fax: (212) 637–3083.	Phillip Clappin, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: (212) 637–4431; Fax: (212) 637–3083.
Region 3, (DE, DC, MD, PA, VA, WV).	Michael Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone: (215) 814–3371; Fax: (215) 814–3274.	Michael Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone: (215) 814–3371; Fax: (215) 814–3274.
Region 4, (AL, FL, GA, KY, MS, NC, SC, TN).	Cindy Nolan, 61 Forsyth Street SW, 10TH FL (9T25), Atlanta, GA 30303–8960, Phone: (404) 562–8425; Fax: (404) 562–8788.	Cindy Nolan, 61 Forsyth Street SW, 10TH FL (9T25), Atlanta, GA 30303–8960, Phone: (404) 562–8425; Fax: (404) 562–8788.
Region 5, (IL, IN, MI, MN, OH, WI).	Keary Cragan, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone: (312) 353–5669; Fax: (312) 692–2161.	Rosita Clark, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone: (312) 886–7251; Fax: (312) 697–2075.
Region 6, (AR, LA, NM, OK, TX).	Roger Hancock, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone: (214) 665–6688; Fax: (214) 665–6660.	Roger Hancock, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone: (214) 665–6688; Fax: (214) 665–6660.
Region 7, (IA, KS, MO, NE)	Susan Klein, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone: (913) 551–7786; Fax: (913) 551–9786.	Jennifer Morris, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone: (913) 551–7341; Fax: (913) 551–9341.
Region 8, (CO, MT, ND, SD, UT, WY).	Christina Wilson, 1595 Wynkoop Street (EPR–AR), Denver, CO 80202–1129, Phone: (303) 312–6706; Fax: (303) 312–6065.	Melisa Devincenzi, 1595 Wynkoop Street (EPR–AR), Denver, CO 80202–1129, Phone: (303) 312–6377; Fax: (303) 312–6962.
Region 9, (AZ, CA, HI, NV, AS, GU, MP).	Jose Garcia, Jr., 600 Wilshire Blvd, Suite 1460, Los Angeles, CA 90017, Phone: (213) 244–1811; Fax: (213) 244–1850.	Jose Garcia, Jr., 600 Wilshire Blvd, Suite 1460, Los Angeles, CA 90017, Phone: (213) 244–1811; Fax: (213) 244–1850.
Region 10, (AK, ID, OR, WA).	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513, Phone: (907) 271–3414; Fax: (907) 271–3424.	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513, Phone: (907) 271–3414; Fax: (907) 271–3424.

Authority: 42 U.S.C. 9628(a).

Dated: September 10, 2019.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2019–20554 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0511; FRL–9999–06]

Pesticide Registration Maintenance Fee: Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants through 2019 Pesticide Registration Maintenance Fee responses to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its

requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before October 23, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0511, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Michael Yanchulis.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 241 pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name
100–1083	100	Doubleplay Selective Herbicide.
100–1164	100	Amistar Fungicide.
100–1356	100	Syn-AI7227.
264–976	264	Raxil MD Extra Fungicide.
264–997	264	Raxil MD Extra W Seed Treatment.
264–1000	264	RTU-Trifloxystrobin-Metalaxyl Flowable Fungicide.
264–1034	264	Prosper T400 Insecticide and Fungicide Seed Treatment.
400–486	400	Mefenoxam 2EC Fungicide.
400–597	400	Annihilate LV.
400–598	400	Annihilate SP.
432–875	432	AEH 315 Manufacturing Concentrate.
432–1477	432	Prostar 70 WDG Fungicide.
707–312	707	Rocima 80.
1015–72	1015	Roo-Pru Super Tri Pak.
1258–161	1258	HTH Dry Chlorinator Granular for Swimming Pools 70%.
1258–162	1258	HTH Dry Chlorinator for Swimming Pools Tablet 70%.
1258–974	1258	Calcium Hypochlorite Tablets—65.
1258–1064	1258	Calcium Hypochlorite Sanitizer Tablets 60.
1258–1171	1258	HTH Tablets 75.
1258–1218	1258	Calcium Hypochlorite 20 Gram Tablets.
1258–1240	1258	HTH Granular Sanitizer/Shock.
1258–1281	1258	Pool Breeze Pool Care System Shock Treatment and Superchlorinator.
1258–1323	1258	Arch OIT 45.
1258–1333	1258	AW08.
1258–1348	1258	AW78.
1258–1356	1258	AW88 (ICM).
1258–1357	1258	AW88 (MASS).
1258–1360	1258	AW91 (MASS).
1258–1362	1258	AW91 (RPL).
1381–209	1381	Quinclorac 75 DF.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name
1381–234	1381	Nicosulfuron 75%.
1381–235	1381	Metsulfuron Methyl 60% Herbicide.
2792–61	2792	Decco 240 Liquid Chlorine.
3008–60	3008	ACC 50% Wood Preservative.
3008–86	3008	Copper MEA Solution.
3008–90	3008	ORD–X372.
3008–94	3008	ORD–X280.
3008–103	3008	CMC 9.0 Wood Preservative.
3008–104	3008	Sustain 20CQ.
3008–105	3008	Sustain 20T.
3008–106	3008	Sustain 20.
3008–107	3008	Everlast CA–B.
3008–108	3008	Sustain 25 Antimicrobial.
3008–109	3008	Sustain 25T.
3008–113	3008	ORD–X380.
3008–118	3008	ORD–X042.
3008–119	3008	FIM 3.
3282–112	3282	D–CON Farm, Ranch & Home.
3282–114	3282	D–CON Bait Station XV.
4822–36	4822	Johnson Buggy Whip Airborne Bug Killer.
4822–220	4822	Raid Indoor Fogger Formula IV.
4822–388	4822	S.C. Johnson Wax Raid Flea Killer Plus VIII Egg Stop Formula.
4822–473	4822	Raid Ant & Roach Killer 16.
4822–563	4822	PC–GI–08.
5185–459	5185	Proteam HGH-Tech Tabs.
5383–89	5383	Homeguard.
5383–117	5383	Polyphase 612.
5383–140	5383	Polyphase 710S.
5383–152	5383	Polyphase 853CR.
5383–153	5383	Polyphase 863CR.
5383–187	5383	Fungitrol 10 LC.
5481–513	5481	Discipline GC Granular Insecticide.
5481–514	5481	Discipline 2EC Insecticide/Miticide.
5481–515	5481	Discipline Flowable Insecticide/Miticide.
5481–516	5481	Wisdom TC Flowable Termiticide/Insecticide.
6836–177	6836	Lonza Formulation P–39.
7969–105	7969	Polyram 80 DF.
7969–321	7969	Cabrio Plus Fungicide.
9198–172	9198	Anderson's Weedgrass Preventer.
9779–353	9779	Terronate WDG.
10163–301	10163	Moncut 70–DF.
10163–320	10163	Moncoat MZ.
10404–67	10404	Lesco 1% Dursban Granular Bait.
33270–35	33270	Glufosinate 280 Herbicide.
47371–191	47371	Formulation HWS–512.
61842–17	61842	M–98–A10 Crop Protectant.
61842–19	61842	Manufacturing Use Product.
61842–36	61842	Carbaryl 97.5% Manufacturing Use Concentrate Insecticide.
66222–107	66222	Chief 3SC Herbicide.
66222–168	66222	Ecomazapyr 2SL.
66222–178	66222	Picket TM Herbicide.
66222–179	66222	Involve TM Herbicide.
66222–183	66222	Adapt Herbicide.
70299–1	70299	Zerotol Algaecide/Fungicide.
70299–2	70299	Oxidate Broad Spectrum Bactericide/Fungicide.
70299–5	70299	Terracide Broad Spectrum Bactericide/Fungicide.
70299–6	70299	Greenclean Pro Granular Algaecide/Fungicide.
70299–8	70299	Sanidate 12.0 Microbiocide.
70299–11	70299	Sanidate 5.0 Sanitizer.
70627–69	70627	Terrific Antibacterial Disinfectant Sanitizer.
70627–73	70627	Scrubbing Bubbles Disinfectant Bathroom Cleaner.
73049–9	73049	Devine Mycoherbicide.
74849–3	74849	Ultima Platinum Plus.
81824–2	81824	Maxxthor Golf CG.
82957–5	82957	Abamectin Technical.
83222–8	83222	Mighty Met 60 DF Herbicide.
83222–25	83222	Bighorn DF Herbicide.
83222–26	83222	Cherokee DF Herbicide.
83222–27	83222	Cherokee Extra DF Herbicide.
83222–28	83222	Unite Broadspectrum Herbicide.
83222–29	83222	Unite Tankmix Herbicide.
83222–35	83222	Pendimethalin 3.3 EC.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name
83923–1	83923	Bithor SC GC.
83923–3	83923	Prothor SC 0.5.
83923–5	83923	Turfthor 2F.
83923–9	83923	Turfthor 2.5G.
83923–10	83923	Turfthor 0.5G.
83923–13	83923	Bithor XT.
85685–1	85685	Fourstar SBG.
89168–55	89168	Liberty Bioact.
90330–1	90330	Dicamba Technical.
90745–1	90745	Root Gatorx.
AL080001	279	Brigade 2EC Insecticide/Miticide.
AL110003	100	Subdue Maxx.
AL140001	100	Micora.
AL170002	7969	Engenia Herbicide.
AR870005	400	Dimilin 25W for Cotton/Soybean.
AZ070003	66222	Vegetable Pro Herbicide.
AZ080010	100	Solicam DF Herbicide.
AZ080014	66222	Mana Alias 4F.
CA060001	66222	Galigan 2E Oxyfluorfen Herbicide.
CA090001	71512	Beleaf 50SG Insecticide.
CA100002	5481	ABBA 0.15EC.
CA120001	100	Subdue Maxx.
CA140005	100	Micora.
FL110012	100	Subdue Maxx.
FL170003	71711	Tolfenpyrad 15EC Insecticide.
GA170001	7969	Engenia Herbicide.
HI040003	264	Provado 1.6 Flowable Insecticide.
HI100002	264	Provado 1.6 Flowable Insecticide.
HI100005	264	Ethrel Brand Ethephon Plant Regulator.
IA100001	279	Mustang Max Insecticide.
IA130001	279	Mustang Maxx.
IA180003	7969	Engenia Herbicide.
ID040003	100	Fusilade Dx Herbicide.
ID060023	66222	Fanfare 2EC.
ID060024	66222	Fanfare 2EC.
ID070014	71512	Beleaf 50SG Insecticide.
ID150003	279	Capture LFR Soil Insecticide.
IL100002	279	Mustang Max Insecticide.
IL130001	279	Mustang Maxx.
KS130002	66222	Mana Atrazine 90DF.
KS990005	10163	Treflan H.F.P.
KS990006	10163	Treflan TR–10.
LA110004	279	Mustang Insecticide.
LA120013	66222	Parazone 3SL.
LA170001	7969	Engenia Herbicide.
MI110008	59639	Sureguard Herbicide.
MI120004	100	Subdue Maxx.
MI140001	264	Balance Flexx Herbicide.
MI140002	264	Corvus Herbicide.
MN000001	100	Dual Magnum Herbicide.
MN030009	279	Nufos 4E.
MN050001	100	Callisto.
MN060003	100	Beacon.
MN090003	264	Nortron Sc Herbicide.
MN100004	10163	Treflan HFP.
MN110001	10163	Moncut 70–DF.
MN180002	7969	Engenia Herbicide.
MO050007	59639	Valor Herbicide.
MO170003	7969	Engenia Herbicide.
MO170004	352	Dupont Fexapan Herbicide.
MO180001	7969	Engenia Herbicide.
MS010006	4787	Glyfos X–TRA.
MS010037	4787	Glyfos Herbicide.
MS050003	71368	Extra Credit 5 Systemic Herbicide.
MS130005	10163	Malathion 8.
MT010002	10163	Sonalan HFP.
MT060003	10163	Sonalan 10G.
MT090003	71512	Beleaf 50SG Insecticide.
MT150003	279	Capture LFR Soil Insecticide.
NC110007	59639	V–10137 1 EC (Herbicide).
NC120001	264	Corvus Herbicide.
NC130004	61842	Sectagon 42.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name
NC150001	66222	Pyrimax 3.2 L Herbicide.
NC160001	264	Sivanto 200 SL.
NC170002	7969	Engenia Herbicide.
ND020013	4787	Glyfos Herbicide.
ND030013	279	Nufos 4E.
ND080003	228	Nufarm Polaris.
ND110005	264	Liberty 280 SL Herbicide.
ND130004	264	Laudis Herbicide.
ND160001	9779	Terranil 6L.
ND180001	7969	Engenia Herbicide.
NE100001	279	Mustang Max Insecticide.
NE100002	279	Mustang Max Insecticide.
NE130002	352	Dupont Basis Blend Herbicide.
NE150003	100	Subdue Maxx.
NJ010002	71368	Weedar 64 Broadleaf Herbicide.
NJ940006	71368	Weedar 64 Broadleaf Herbicide.
NM100002	71512	Beleaf 50SG Insecticide.
NV070007	71512	Beleaf 50SG Insecticide.
NV100001	10163	Moncut 70–DF.
NV900001	10163	Treflan TR–10 Granules.
NV950001	10163	Sonalan HFP.
NY150001	7969	Merivon Xemium Brand Fungicide.
OR160011	279	Exirel Insect Control.
OR980006	10163	Gowan Cryolite Bait.
PA150002	100	Subdue Maxx.
SD080001	7969	G-Max Lite Herbicide.
SD130007	264	Laudis Herbicide.
SD150004	264	SC 547 Herbicide.
TN180003	7969	Engenia Herbicide.
TX030005	400	Terramaster 4EC.
TX080001	279	Brigade 2EC Insecticide/Miticide.
TX080020	400	Firestorm.
TX080022	264	Ethrel Brand Ethephon Plant Regulator.
TX150004	100	Subdue Maxx.
TX930003	10163	Treflan TR–10.
TX940005	400	Comite II.
TX960012	10163	Treflan H.F.P.
UT070007	71512	Beleaf 50SG Insecticide.
UT140001	10163	Onager 1E.
UT180003	100	Gramoxone SL 2.0.
UT870002	10163	Treflan TR–10 Granules.
UT900001	10163	Treflan TR–10 Granules.
VA110004	264	Balance Flexx Herbicide.
VA110005	264	Corvus Herbicide.
VA130003	61842	Sectagon 42.
VA150003	100	Subdue Maxx.
WA000024	400	Dimilin 2L.
WA020030	264	Aliette WDG Fungicide.
WA040005	10163	Onager 1E.
WA060007	66222	Rimon 0.83 EC.
WA070013	71512	Beleaf 50SG Insecticide.
WA070015	279	Brigade 2EC Insecticide/Miticide.
WA070017	279	Brigade 2EC Insecticide/Miticide.
WA090005	9779	Simazine 4L.
WA150002	279	Capture LFR Soil Insecticide.
WA900016	10163	Treflan TR–10.
WA940018	10163	Sonalan HFP.
WA980001	10163	Gowan Cryolite Bait.
WI110002	71512	Omega 500F.
WY030005	10163	Sonalan HFP.
WY030006	100	Fusilade DX Herbicide.
WY070004	400	Acramite-4SC.
WY080001	400	Comite.
WY080007	400	Firestorm.
WY080008	71512	Beleaf 50SG Insecticide.
WY100004	400	Dimilin 2L.
WY140004	66222	Parazone 3SL.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419.
228	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
264	Bayer Cropscience LP, 800 N Linbergh Blvd., St. Louis, MO 63167.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E. I. Du Pont de Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
400	MacDermid Agricultural Solutions, Inc., c/o Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
432	Bayer Environmental Science, A Division of Bayer Cropscience LP, 5000 Centregreen Way, Suite 400, Cary, NC 27513.
707	DDP Specialty Electronic Materials US 5, LLC, 200 Powder Mill Road—ESL 353, Wilmington, DE 19803.
1015	Pyxis Regulatory Consulting, Inc., Agent for Douglas Products and Packaging Co., 4110 136th Street CT NW, Gig Harbor, WA 98332.
1258	Arch Chemicals, Inc., 1200 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
2792	Decco US Post-Harvest, Inc., 1713 South California Avenue, Monrovia, CA 91016.
3008	Koppers Performance Chemicals, Inc., 1016 Everee Inn Road, Griffin, GA 30224.
3282	Reckitt Benckiser LLC, 399 Interpace Parkway, Parsippany, NJ 07054.
4787	FMC Corporation, Agent for Cheminova A/S, 1735 Market Street, Philadelphia, PA 19103.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5185	Bio-Lab, Inc., P.O. Box 30002, Lawrenceville, GA 30049.
5383	Troy Chemical Corp., c/o. Troy Corporation, 8 Vreeland Road, Florham Park, NJ 07932.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660.
6836	Lonza Inc., 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
7969	BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709.
9198	The Andersons, Inc., P.O. Box 119, Maumee, OH 43537.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10404	LESCO, Inc., 1385 East 36th Street, Cleveland, OH 44114.
33270	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
47371	H&S Chemicals Division of Lonza Inc., 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
61842	Pyxis Regulatory Consulting, Inc., Agent for Tessenderlo Kerley, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70299	Biosafe Systems, LLC, 22 Meadow Street, East Hartford, CT 06108.
70627	Diversey, Inc., P.O. Box 19747, Charlotte, NC 28219.
71368	Nufarm, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
71512	ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.
71711	Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808.
73049	Valent Biosciences LLC, 870 Technology Way, Libertyville, IL 60048.
74849	Innovative Water Care, LLC, D/B/A Advantis Technologies, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
81824	Pyxis Regulatory Consulting, Inc., Agent for Ensystex II, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
82957	Pyxis Regulatory Consulting, Inc., Agent for Ensystex III, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
83222	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
83923	Pyxis Regulatory Consulting, Inc., Agent for Ensystex IV, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
85685	Fourstar Microbial Products, LLC, 1501 East Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
89168	Liberty Crop Protection, LLC, 1880 Fall River Drive, #100, Loveland, CO 80538.
90330	Pyxis Regulatory Consulting, Inc., Agent for US Raymat AG LLC, 4110 136th Street CT NW, Gig Harbor, WA 98332.
90745	KRK Consulting LLC, Agent for RCS II Inc., 5807 Churchill Way, Medina, OH 44256.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. EPA will provide a 30-day comment period on the proposed requests. Thereafter, the EPA Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous

cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products until January 15, 2020, or the date of that the cancellation notice is published in the **Federal Register**, whichever is later. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 11, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–20523 Filed 9–20–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meetings

TIME AND DATE: Thursday, October 10, 2019, at 9:30 a.m. (EST).

PLACE: 811 Vermont Avenue NW, Room 1126, Washington, DC 20571.

STATUS: Portions of this meeting will be open to the public. Remaining items will be closed to the public.

MATTERS TO BE CONSIDERED: Open Meeting of the Board of Directors of the Export-Import Bank of the United States (EXIM Bank):

1. PEFCO Secured Notes Resolutions for FY 2020

PORTIONS OPEN TO THE PUBLIC: The meeting will be open to public participation for Item No. 1 only.

CONTACT PERSON FOR MORE INFORMATION: Members of the public who wish to attend the meeting should call Joyce Brotemarkle Stone, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by 4:00 p.m. (EST), Tuesday, October 8, 2019.

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–20673 Filed 9–19–19; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: September 26, 2019; 10:00 a.m.

PLACE: 800 N. Capitol Street NW, First Floor Hearing Room, Washington, DC.

STATUS: Parts of this meeting will be open to the public and will be streamed live at *https://bit.ly/2IZBIkY.* The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing by Commissioner Dye on US-Japan Bilateral Meeting
2. Briefing by Commissioner Maffei on Visit to Gulf Ports
3. Implementation of the Frank LoBiondo Authorization Act of 2018
4. Petition of the World Shipping Council for Exemption—P3–18

Closed Session

1. Delegated Authority of the Bureau of Enforcement and Enforcement Procedures

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2019–20668 Filed 9–19–19; 4:15 pm]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Thursday, October 17, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *KenAmerican Resources, Inc.,* Docket No. KENT 2013–0211. (Issues include whether the Judge erred in concluding that the operator's employees had not given advance notice of an MSHA inspection.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769; Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: September 18, 2019.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–20589 Filed 9–18–19; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Friday, October 18, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *KenAmerican Resources, Inc.,* Docket No. KENT 2013–0211. (Issues include whether the Judge erred in concluding that the operator's employees had not given advance notice of an MSHA inspection.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769; Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: September 18, 2019.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–20590 Filed 9–18–19; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The company listed in this notice has applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote the shares of a savings association.

The application listed below is available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2019.

A. Federal Reserve Bank of Cleveland (Mary S. Johnson, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *First Mutual Holding Company, Lakewood, Ohio;* a mutual savings and loan holding company, to acquire Blue Grass Federal Savings and Loan Association, Paris, Kentucky, a standalone federal mutual savings association, through the merger of Blue Grass Federal Savings and Loan Association with an interim federal savings association subsidiary of First Mutual Holding Company, pursuant to section 10(e) of the Home Owners' Loan Act.

Board of Governors of the Federal Reserve System, September 17, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–20456 Filed 9–20–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The applications listed below are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2019.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *CF Mutual Holding Company, Cincinnati, Ohio;* a mutual savings and loan holding company that indirectly controls Cincinnati Federal, Cincinnati, Ohio, to complete a second step conversion, converting from the mutual to the stock form. As part of the conversion, CF Mutual Holding Company and Cincinnati Bancorp, Cincinnati, Ohio, an existing mid-tier savings and loan holding company controlled by CF Mutual Holding Company, will cease to exist and Cincinnati Federal will become a wholly-owned subsidiary of Cincinnati Bancorp, Inc., a newly-formed Maryland corporation headquartered in Cincinnati, Ohio.

2. *Cincinnati Bancorp, Inc.;* a newly-formed Maryland corporation headquartered in Cincinnati, Ohio, to become a savings and loan holding company by acquiring 100 percent of the voting shares of Cincinnati Federal, Cincinnati, Ohio.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *FFBW, MHC, Brookfield, Wisconsin;* a federally-chartered mutual savings and loan holding company that indirectly controls First Federal Bank of Wisconsin, Waukesha, Wisconsin, to complete a second step conversion through merger with and into FFBW MHC's federally-chartered stock savings and loan holding company subsidiary, FFBW, Inc., Brookfield, Wisconsin. Thereafter, as part of the transaction, FFBW, Inc., the federally-chartered stock savings and loan holding company, will merge with and into a newly formed Maryland corporation headquartered in Brookfield, Wisconsin, also named FFBW, Inc., and the Maryland corporation thereby will become a savings and loan holding company with respect to First Federal Bank of Wisconsin, pursuant to section 10(e) of the HOLA.

Board of Governors of the Federal Reserve System, September 17, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–20455 Filed 9–20–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3386–PN]

Medicare Program; Application From The Compliance Team for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from The Compliance Team for initial recognition as a national accrediting organization for suppliers of home infusion therapy services that wish to participate in the Medicare program. Within 60 days of receipt of an organization's complete application, the statute requires that CMS publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 23, 2019.

ADDRESSES: In commenting, please refer to file code CMS–3386–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3386–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3386–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Christina Mister-Ward, (410)786–2441.
Shannon Freeland, (410)786–4348.
Lillian Williams, (410)786–8636.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that website to view public comments.

I. Background

Infusion therapy is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for Home Infusion Therapy (HIT) services. Section 1861(iii)(1) of the Act defines ''home infusion therapy'' as: professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must be under—

- The care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- A plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D) of the Act defines ''qualified home infusion therapy suppliers'' as being accredited by a CMS-approved AO.

On March 1, 2019, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. Complete applications will be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and the regulations at § 488.1010 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our regulations at 42 CFR 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of TCT's initial request for CMS approval of its HIT accreditation program. This notice also solicits public comment on whether TCT's requirements meet or exceed the Medicare conditions of participation for HIT services.

III. Evaluation of Deeming Authority Request

TCT submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its HIT accreditation program. This application was determined to be complete on July 27, 2019. Under section 1834(u)(5) of the Act and the regulations at § 488.1010 (Application and re-application procedures for national HIT AOs), our review and evaluation of TCT will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of TCT's standards for HIT as compared with CMS' HIT conditions for certification.
- TCT's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of TCT's to CMS standards and processes, including survey frequency, and the ability to

investigate and respond appropriately to complaints against accredited facilities.

++ TCT's processes and procedures for monitoring a HIT found out of compliance with TCT's program requirements. .

++ TCT's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ TCT's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.

++ The adequacy of TCT's staff and other resources, and its financial viability.

++ TCT's capacity to adequately fund required surveys.

++ TCT's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ TCT's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

• TCT's agreement or policies for voluntary and involuntary termination of suppliers.

• TCT agreement or policies for voluntary and involuntary termination of the HIT AO program.

IV. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: September 12, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–20465 Filed 9–20–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10609 and CMS–10142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 22, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10609 Medicaid Program Face-to-Face Requirements for Home Health Services and Supporting Regulations

CMS–10142 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Medicaid Program Face-to-Face Requirements for Home Health Services and Supporting Regulations; *Use:* 42 CFR 440.70(f) and (g) requires that physicians (or for medical equipment, authorized non-physician practitioners (NPPs) including nurse practitioners, clinical nurse specialists and physician assistants) document that there was a face-to-face encounter with the Medicaid beneficiary prior to the physician making a certification that home health services are required. The burden associated with this requirement is the time and effort to complete this documentation. The burden also includes writing, typing, or dictating the face-to-face documentation and signing/dating the documentation. *Form Number:* CMS–10609 (OMB control number: 0938–1319); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 381,148; *Total Annual Responses:* 1,143,443; *Total Annual Hours:* 190,955. (For policy questions regarding this collection contact Alexandra Smilow at 410–786–0790.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS).

Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. The MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form Number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Yearly; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026.)

Dated: September 18, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–20484 Filed 9–20–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3387–PN]

Medicare and Medicaid Programs; Application From The Compliance Team (TCT) for Initial CMS Approval of its Diabetes Outpatient Self-Management Training Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from The Compliance Team for initial recognition as a national accrediting organization for accrediting entities that wish to furnish diabetes outpatient self-management training services to Medicare beneficiaries.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 23, 2019.

ADDRESSES: In commenting, please refer to file code CMS–3387–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3387–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3387–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:
Christina Mister-Ward, (410) 786–2441.
Shannon Freeland, (410) 786–4348.
Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov* . Follow the search instructions on that website to view public comments.

I. Background

Diabetes outpatient self-management training services is defined at section 1861(qq)(1) of the Social Security Act (the Act) as ''educational and training services furnished (at such times as the Secretary determines appropriate) to an individual with diabetes by a certified provider (as described in paragraph (2)(A)) in an outpatient setting by an individual or entity who meets the quality standards described in paragraph (2)(B), but only if the physician who is managing the individual's diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual's diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.''

In addition, section 1861(qq)(2)(A) of the Act describes a ''certified provider'' as a physician, or other individual or entity designated by the Secretary of the Department of Health and Human Services (the Secretary), that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be

made under this title. Section 1861(qq)(2)(B) of the Act further specifies that a physician, or such other individual or entity, must meet the quality standards established by the Secretary, except that the physician or other individual or entity shall be deemed to have met such standards if the physician or other individual or entity meets applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by such Board, or is recognized by an organization that represents individuals (including individuals under this title) with diabetes as meeting standards for furnishing the services.

The statute also permits diabetes outpatient self-management training service programs to be deemed to have met Medicare regulatory quality standards if they are accredited by an organization approved by the Centers for Medicare & Medicaid Services (CMS). A national accrediting organization (AO) must have an agreement in effect with the Secretary and meet the standards and requirements specified in 42 CFR part 410, subpart H, to qualify for deeming authority. Our regulations pertaining to the application procedures to be an approved national accreditation organization for diabetes outpatient self-management training are specified at § 410.142 (CMS process for approving national accreditation organizations). A national accreditation organization applying for deeming authority must provide us with reasonable assurance that the AO requires accredited entities to meet CMS' quality standards, the National Standards for Diabetes Self-Management Education and Support standards, or alternative requirements that meet or exceed our requirements that have been developed by a national accreditation organization and approved by CMS. (See § 410.144 Quality standards for deemed entities.) We may approve and recognize a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish training. The national accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and § 410.142 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3) of the Act and § 410.142(d) require that we publish, within 60 days after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. Section 1865(a)(3)(A) of the Act further states, we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of The Compliance Team's (TCT's) initial request for CMS approval of its diabetes outpatient self-management training accreditation program. This notice also solicits public comment on whether TCT's requirements meet or exceed the Medicare conditions for certification for diabetes outpatient self-management training services.

III. Evaluation of Deeming Authority Request

TCT submitted all the necessary materials to enable us to make a determination concerning its request for initial CMS approval of its diabetes outpatient self-management training accreditation program. This application was determined to be complete on July 27, 2019. Under section 1865(a)(2) of the Act and our regulations at § 410.142, our review and evaluation of TCT will be conducted in accordance with our regulations, including:

- The requirements and quality standards TCT uses to accredit entities to furnish training.
- TCT's accreditation process to determine the following:
  - ++ Frequency of accreditation.
  - ++ Copies of accreditation forms, guidelines, and instructions to evaluators.
  - ++ The accreditation review process and the accreditation status decision making process.
  - ++ The procedures used to notify a deemed entity of deficiencies in its diabetes outpatient self-management training program and procedures to monitor the correction of those deficiencies.
  - ++ The procedures used to enforce compliance with the accreditation requirements and standards.
  - ++ Detailed information about the individuals who perform evaluations for the organization.
  - ++ A description of the organization's data management and analysis system for its accreditation activities and decisions, including reports, tables, and other displays generated by that system.
  - ++ A description of the organization's procedures for responding to and investigating complaints against an approved entity, including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, and CMS.
  - ++ A description of the organization's policies and procedures for withholding or removing a certificate of accreditation for failure to meet the organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.
  - ++ A description of all types (for example, full or partial) and categories (for example, provisional, conditional, or temporary) of accreditation offered by the organization, the duration of each type and category of accreditation, and a statement identifying the types and categories that will serve as a basis for accreditation if CMS approves the organization.
  - ++ A list of all of the approved entities currently accredited to furnish training and the type, category, and expiration date of the accreditation held by each of them.
  - ++ The name and address of each person with an ownership or control interest in the organization.
  - ++ Documentation that demonstrates its ability to furnish CMS with electronic data in CMS-compatible format.
  - ++ A resource analysis that demonstrates that its staffing, funding, and other resources are adequate to perform the required accreditation activities.
  - ++ A statement acknowledging that, as a condition for approval and recognition by CMS of its accreditation program, it agrees to comply with the requirements set forth in §§ 410.142 through 410.146.
  - ++ Additional information CMS requests to enable it to respond to the organization's request for CMS approval and recognition of its accreditation program to accredit entities to furnish training.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we

will publish a final notice in the **Federal Register** announcing the result of our evaluation.

IV. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: September 6, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–20466 Filed 9–20–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3805]

The Accreditation Scheme for Conformity Assessment Pilot Program; Draft Guidance for Industry, Accreditation Bodies, Testing Laboratories, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program.'' The Pilot Accreditation Scheme for Conformity Assessment Program (hereafter referred to as the ASCA Pilot) is authorized under the Federal Food, Drug, and Cosmetic Act (FD&C Act). In accordance with amendments made to the FD&C Act by the FDA Reauthorization Act of 2017 (FDARA) and as part of the enactment of the Medical Device User Fee Amendments of 2017 (MDUFA IV), FDA was directed to issue a draft guidance regarding the goals and implementation of the ASCA Pilot. The establishment of the goals, scope, procedures, and a suitable framework for the voluntary ASCA Pilot supports the Agency's continued efforts to use its scientific resources effectively to protect and promote public health by simplifying certain aspects of premarket review, thereby reducing burdens on the Agency for individual submissions. FDA believes the voluntary ASCA Pilot may further encourage international harmonization of medical device regulation because it incorporates elements, where appropriate, from a well-established set of international conformity assessment practices and standards (*e.g.,* ISO/IEC 17000 series). The voluntary ASCA Pilot does not supplant or alter any other existing statutory or regulatory requirements governing the decision-making process for premarket submissions. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by December 23, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3805 for ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Draft Guidance for Industry, Accreditation Bodies, Testing Laboratories, and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the

electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Draft Guidance for Industry, Accreditation Bodies, Testing Laboratories, and Food and Drug Administration Staff'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Erin Cutts, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5554, Silver Spring, MD 20993–0002, 301–796–6307; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Reauthorization Act of 2017 (FDARA) amended section 514 of the FD&C Act (21 U.S.C. 360d) by adding a new subsection (d) with the title ''Pilot Accreditation Scheme for Conformity Assessment'' (see Pub. L. 115–52, section 205). The new section 514(d) requires FDA to establish a pilot program under which testing laboratories may be accredited by accreditation bodies meeting criteria specified by FDA to assess the conformance of a device within certain FDA-recognized standards. Determinations by testing laboratories so accredited that a device conforms with an eligible standard included as part of the pilot program shall be accepted by FDA for the purposes of demonstrating such conformity unless FDA finds that a particular such determination shall not be so accepted.

The statute provides that FDA may review determinations by accredited testing laboratories, including by conducting periodic audits of such determinations or processes of accreditation bodies or testing laboratories. Following such a review, or if FDA becomes aware of information materially bearing on safety or effectiveness of a device assessed by an accredited testing laboratory, FDA may take additional measures as determined appropriate, including suspension or withdrawal of accreditation of a testing laboratory or a request for additional information regarding a specific device.

Under the ASCA Pilot's conformity assessment scheme, recognized accreditation bodies accredit testing laboratories using ASCA program specifications associated with each eligible standard and ISO/IEC 17025:2017: General requirements for the competence of testing and calibration laboratories. ASCA-accredited testing laboratories may conduct testing to determine conformance of a device with at least one of the standards eligible for inclusion in the ASCA Pilot. When an ASCA-accredited testing laboratory conducts such testing, it may provide a complete test report to the device manufacturer containing the elements listed in the ASCA program specifications. A device manufacturer who utilizes an ASCA-accredited testing laboratory to perform testing in accordance with the provisions of the ASCA Pilot can then include a declaration of conformity with supplemental documentation (including a summary test report) as part of a premarket submission to FDA.

FDA held a public workshop entitled ''Accreditation Scheme for Conformity Assessment of Medical Devices to Food and Drug Administration—Recognized Standards'' on May 22–23, 2018,[1] to obtain input and recommendations from stakeholders about the ASCA Pilot, including its goals and scope as well as a suitable framework and procedures to facilitate implementation. The ASCA Pilot is predicated on the processes and policies outlined in this guidance regarding demonstration of competence and program participation by accreditation bodies and testing laboratories.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the ''Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Draft Guidance for Industry, Accreditation Bodies, Testing Laboratories, and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17037 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

In the **Federal Register** of September 5, 2019 (84 FR 46737), FDA requested public comment on the collections of information associated with the ASCA Pilot. The proposed information collection and our burden estimate is substantially the same, and is meant to encompass, the information collections proposed in the draft guidance.

In addition, this draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the

[1] **Federal Register** Notice: *https://www.federalregister.gov/documents/2018/01/16/2018-00551/accreditation-scheme-for-conformity-assessment-of-medical-devices-to-food-and-drug.*

following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
814, subparts A through E	Premarket Approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo Classification Process	0910–0844
312	Investigational New Drug Application	0910–0014
601	Biologics License Application	0910–0338

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20543 Filed 9–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3679]

Interacting With the Food and Drug Administration on Complex Innovative Clinical Trial Designs for Drugs and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Interacting with the FDA on Complex Innovative Clinical Trial Designs for Drugs and Biological Products.'' The draft guidance document provides recommendations to sponsors and applicants on interacting with the FDA on complex innovative clinical trial design (CID) proposals for drugs or biological products. In accordance with the mandate under the 21st Century Cures Act (Cures Act), the draft guidance discusses the use of novel trial designs in the development and regulatory review of drugs and biological products, how sponsors may obtain feedback on technical issues related to modeling and simulation, and the types of quantitative and qualitative information that should be submitted for review.

DATES: Submit either electronic or written comments on the draft guidance by December 23, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3679 for ''Interacting with the FDA on Complex Innovative Clinical Trial Designs for Drugs and Biological Products; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the

''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (OCOD), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002 or the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Shruti Modi, CBER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Scott Goldie, CDER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 3557, Silver Spring, MD 20993–0002, 301–796–2055.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Interacting with the FDA on Complex Innovative Clinical Trial Designs for Drugs and Biological Products.'' The draft guidance document provides recommendations to sponsors and applicants on interacting with the FDA on CID proposals for drugs or biological products. FDA is issuing this guidance to satisfy, in part, a mandate under section 3021 of the Cures Act. In accordance with the Cures Act mandate, the draft guidance discusses the use of novel trial designs in the development and regulatory review of drugs and biological products, how sponsors may obtain feedback on technical issues related to modeling and simulation, and the types of quantitative and qualitative information that should be submitted for review.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Interacting with the FDA on Complex Innovative Clinical Trial Designs for Drugs and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520); the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; and the collections of information in the guidance for industry entitled ''Special Protocol Assessment,'' have been approved under 0910–0470.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs,* or *https://www.regulations.gov.*

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20494 Filed 9–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Innovative Epidemiologic approaches for understanding long-term health outcomes of HIV-exposed uninfected populations. (R61/R33)

Date: December 13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Huang, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Health and Human Development, NIH, Bethesda, MD 20817, 301–435–8380, *helen.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20449 Filed 9–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung and Blood Initial Review Group Clinical Trials Review Committee.

Date: October 24–25, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–827–7912, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20448 Filed 9–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth sections in 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Ancillary Studies (R01).

Date: October 30, 2019.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–827–7942, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20447 Filed 9–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of January 22, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
New Castle County, Delaware and Incorporated Areas Docket No.: FEMA–B–1701 and FEMA–B–1849	
City of New Castle	Public Works Building, 900 Wilmington Road, New Castle, DE 19720.

Community	Community map repository address
City of Newark	Planning and Development Department, 220 South Main Street, Newark, DE 19711.
City of Wilmington	Department of Licenses and Inspections, 800 North French Street, Wilmington, DE 19801.
Town of Elsmere	Town Hall, 11 Poplar Avenue, Elsmere, DE 19805.
Town of Middletown	Town Hall, 19 West Green Street, Middletown, DE 19709.
Town of Newport	Administrative Office, 226 North James Street, Newport, DE 19804.
Unincorporated Areas of New Castle County	New Castle County Land Use Department, 87 Reads Way, New Castle, DE 19720.
Village of Arden	Buzz Ware Village Center, 2119 The Highway, Arden, DE 19810.
Village of Ardentown	New Castle County Land Use Department, 87 Reads Way, New Castle, DE 19720.
Butler County, Kansas and Incorporated Areas Docket No.: FEMA–B–1843	
City of Augusta	City Hall, 113 East 6th Avenue, Augusta, KS 67010.
City of El Dorado	Engineering Building, 216 North Vine Street, El Dorado, KS 67042.
Unincorporated Areas of Butler County	Butler County Courthouse, 205 West Central Avenue, El Dorado, KS 67042.
Nodaway County, Missouri and Incorporated Areas Docket No.: FEMA–B–1851	
City of Barnard	City Hall, 504 4th Street, Barnard, MO 64423.
City of Burlington Junction	City Hall, 122 North Clarinda Street, Burlington Junction, MO 64428.
City of Conception Junction	Nodaway County Administration Center, 403 North Market Street, Maryville, MO 64468.
City of Elmo	City Hall, 201 Main Street, Elmo, MO 64445.
City of Hopkins	City Hall, 124 North 3rd Street, Hopkins, MO 64461.
City of Maryville	City Hall, 415 North Market Street, Maryville, MO 64468.
City of Parnell	Nodaway County Administration Center, 403 North Market Street, Maryville, MO 64468.
City of Skidmore	City Hall, 108 South Walnut Street, Skidmore, MO 64487.
Unincorporated Areas of Nodaway County	Nodaway County Administration Center, 403 North Market Street, Maryville, MO 64468.
Village of Arkoe	Nodaway County Administration Center, 403 North Market Street, Maryville, MO 64468.
Village of Clyde	Nodaway County Administration Center, 403 North Market Street, Maryville, MO 64468.
Scotland County, Missouri and Incorporated Areas Docket No.: FEMA–B–1853	
City of Memphis	City Hall, 125 West Jefferson Street, Memphis, MO 63555.
City of South Gorin	Scotland County Courthouse, 117 South Market Street, Memphis, MO 63555.
Unincorporated Areas of Scotland County	Scotland County Courthouse, 117 South Market Street, Memphis, MO 63555.
Village of Arbela	Scotland County Courthouse, 117 South Market Street, Memphis, MO 63555.
Shelby County, Missouri and Incorporated Areas Docket No.: FEMA–B–1851	
City of Shelbina	City Hall, 116 East Walnut Street, Shelbina, MO 63468.
City of Shelbyville	City Hall, 106 South Washington Street, Shelbyville, MO 63469.
Unincorporated Areas of Shelby County	Shelby County Courthouse, 100 East Main Street, Shelbyville, MO 63469.
Village of Bethel	City Office, 120 Maple Street, Bethel, MO 63434.
Village of Leonard	Shelby County Courthouse, 100 East Main Street, Shelbyville, MO 63469.
Wright County, Missouri and Incorporated Areas Docket No.: FEMA–B–1853	
City of Hartville	City Hall, 200 South Main Street, Hartville, MO 65667.
City of Mansfield	City Hall, 122 North Business 60, Mansfield, MO 65704.
City of Mountain Grove	City Hall, 100 East State Street, Mountain Grove, MO 65711.
Unincorporated Areas of Wright County	Wright County Courthouse, 125 Court Square, Hartville, MO 65667.
Gonzales County, Texas and Incorporated Areas Docket No.: FEMA–B–1757	
City of Gonzales	City Hall, 820 St. Joseph Street, Gonzales, TX 78629.

Community	Community map repository address
Unincorporated Areas of Gonzales County	Gonzales County Courthouse, 414 St. Joseph Street, Suite 200, Gonzales, TX 78629.
Travis County, Texas and Incorporated Areas Docket No.: FEMA–B–1751	
City of Austin	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.
City of Bee Cave	City Hall, 4000 Galleria Parkway, Bee Cave, TX 78738.
City of Jonestown	City Hall, 18649 FM 1431, Suite 4A, Jonestown, TX 78645.
City of Lago Vista	City Hall, 5803 Thunderbird Street, Lago Vista, TX 78645.
City of Lakeway	City Hall, 1102 Lohmans Crossing Road, Lakeway, TX 78734.
City of Leander	City Hall, 105 North Brushy Street, Leander, TX 78641.
City of West Lake Hills	City Hall, 911 Westlake Drive, West Lake Hills, TX 78746.
Unincorporated Areas of Travis County	Travis County Transportation and Natural Resources, 700 Lavaca Street, 5th Floor, Austin, TX 78701.
Village of The Hills	Administrative Offices, 102 Trophy Drive, The Hills, TX 78738.

[FR Doc. 2019–20479 Filed 9–20–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1961]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 23, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1961, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each

community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazard data* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
City and County of San Francisco, California and Incorporated Areas Project: 11–09–1225S Preliminary Date: May 31, 2019	
City and County of San Francisco	Office of the City Administrator, City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.
Lake County, Ohio and Incorporated Areas Project: 13–05–1798S Preliminary Date: April 23, 2019	
City of Mentor	Municipal Center, 8500 Civic Center Boulevard, Mentor, OH 44060.
City of Mentor-on-the-Lake	City Hall, 5860 Andrews Road, Mentor-on-the-Lake, OH 44060.
Unincorporated Areas of Lake County	County Engineer's Office, 550 Blackbrook Road, Painesville, OH 44077.
Village of Fairport Harbor	Village Hall, 220 Third Street, Fairport Harbor, OH 44077.
Village of Grand River	Village Hall, 205 Singer Avenue, Grand River, OH 44045.

[FR Doc. 2019–20478 Filed 9–20–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of January 8, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Wilson County, Kansas and Incorporated Areas Docket No.: FEMA–B–1851	
City of Altoona	City Hall, 715 Main Street, Altoona, KS 66710.
City of Benedict	Wilson County Courthouse, 615 Madison Street, Fredonia, KS 66736.
City of Coyville	City Office, 21939 Decatur Road, Coyville, KS 66736.
City of Fredonia	City Hall, 100 North 15th Street, Fredonia, KS 66736.
City of Neodesha	City Hall, 1407 North 8th Street, Neodesha, KS 66757.
City of New Albany	Wilson County Courthouse, 615 Madison Street, Fredonia, KS 66736.
Unincorporated Areas of Wilson County	Wilson County Courthouse, 615 Madison Street, Fredonia, KS 66736.

[FR Doc. 2019–20482 Filed 9–20–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1960]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Mesa (19–09–0940P).	The Honorable John Giles, Mayor, City of Mesa, P.O. Box 1466, Mesa, AZ 85211.	City Hall Engineering Department, 20 East Main Street, #500, Mesa, AZ 85201.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 30, 2019	040048
Santa Cruz	Unincorporated Areas of Santa Cruz County (19–09–1888P).	The Honorable Rudy Molera, Chairman, Board of Supervisors, Santa Cruz County, 2150 North Congress Drive, Nogales, AZ 85621.	Santa Cruz County Flood Control District, Gabilondo-Zehentner Building, 275 Rio Rico Drive, Rio Rico, AZ 85648.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 16, 2019	040090
California:						
Kern	City of Delano (17–09–2119P).	The Honorable Joe E. Aguirre, Mayor, City of Delano, 1015 11th Avenue, Delano, CA 93215.	Community Development, 1015 11th Avenue, Delano, CA 93215.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2019	060078
Kern	Unincorporated Areas of Kern County (17–09–2119P).	The Honorable David Couch, Chairman, Board of Supervisors, Kern County, 1115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301.	Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, CA 93301.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2019	060075
Santa Clara	City of Santa Clara (19–09–0759P).	The Honorable Lisa M. Gillmor, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050.	Planning and Inspection Department, 1500 Warburton Avenue, Santa Clara, CA 95050.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 19, 2019	060350
Florida: St. Johns	Unincorporated Areas of St. Johns County (19–04–4306P).	The Honorable Paul M. Waldron, Chair, Board of County Commissioners, St. Johns County Administration Building, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 19, 2019	125147
Idaho: Canyon	City of Nampa (19–10–0247P).	The Honorable Debbie Kling, Mayor, City of Nampa, 411 3rd Street South, Nampa, ID 83651.	City Hall, 411 3rd Street South, Nampa, ID 83651.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 11, 2019	160038
Illinois:						
St. Clair	City of O'Fallon (18–05–3948P).	The Honorable Herb Roach, Mayor, City of O'Fallon, 255 South Lincoln Avenue, O'Fallon, IL 62269.	City Hall, 255 South Lincoln Avenue, O'Fallon, IL 62269.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2019	170633
St. Clair	Unincorporated Areas of St. Clair County (18–05–3948P).	The Honorable Mark Kern, Chairman, St. Clair County Board, 10 Public Square, Belleville, IL 62220.	St. Clair County Courthouse, 10 Public Square, Belleville, IL 62220.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2019	170616
Iowa:						
Polk	City of Grimes (18–07–2087P).	The Honorable Scott Mikkelsen, Mayor, City of Grimes, City Hall, 101 Northeast Harvey Street, Grimes, IA 50111.	City Hall, 101 Northeast Harvey Street, Grimes, IA 50111.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 6, 2019	190228
Polk	City of Urbandale (18–07–2087P).	The Honorable Bob Andeweg, Mayor, City of Urbandale, City Hall, 3600 86th Street, Urbandale, IA 50322.	City Hall, 3600 86th Street, Urbandale, IA 50322.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 6, 2019	190230
Kansas:						
Shawnee	City of Topeka (19–07–0967P).	The Honorable Michelle De La Isla, Mayor, City of Topeka, 215 Southeast 7th Street, Room 350, Topeka, KS 66603.	Engineering Division, 620 Southeast Madison Street, Topeka, KS 66603.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 24, 2019	205187
Shawnee.	Unincorporated Areas of Shawnee County (19–07–0967P).	Mr. Bob Archer, Chairperson, Shawnee County Board of Commissioners, 200 Southeast 7th Street B–11, Topeka, KS 66603.	Shawnee County Engineers Office, 1515 Northwest Saline Street, Topeka, KS 66618.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 24, 2019	200331
Missouri: Jackson	City of Lee's Summit (19–07–0788P).	The Honorable Bill Baird, Mayor, City of Lee's Summit, 220 Southeast Green Street, Lee's Summit, MO 64063.	Mayor's Office, 220 Southeast Green Street, Lee's Summit, MO 64063.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 19, 2019	290174

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
New Jersey: Passaic.	Borough of Woodland Park (19–02–0818P).	The Honorable Keith Kazmark, Mayor, Borough of Woodland Park, Municipal Building, 5 Brophy Lane, Woodland Park, NJ 07424.	Municipal Building, Code Enforcement Office, 5 Brophy Lane, Woodland Park, NJ 07424.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 13, 2019	340412
Ohio:						
Franklin	Unincorporated Areas of Franklin County (19–05–3292P).	Mr. John O'Grady Commissioner, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	Franklin County Engineer Office, 970 Dublin Road, Columbus, OH 43215.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2019	390167
Warren.	City of Springboro (19–05–2468P).	The Honorable John Agenbroad, Mayor, City of Springboro, 320 West Central Avenue, Springboro, OH 45066.	Municipal Building, 320 West Central Avenue, Springboro, OH 45066.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2019	390564
Texas: Tarrant	City of Arlington (18–06–3754P).	The Honorable Jeff Williams, Mayor, City of Arlington, City Hall, P.O. Box 90231, Arlington, TX 76010.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 6, 2019	485454
Washington:						
Jefferson	City of Port Townsend (19–10–0775P).	The Honorable Deborah Stinson, Mayor, City of Port Townsend, 250 Madison Street, Suite 2, Port Townsend, WA 98368.	City Hall, 250 Madison Street Suite 2, Port Townsend, WA 98368.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2019	530070
Kitsap	Unincorporated Areas of Kitsap County (18–10–1595P).	The Honorable Ed Wolfe, Kitsap County Commissioner, District 3, 614 Division Street, MS–4, Port Orchard, WA 98366.	Kitsap County, Department of Community Development, 614 Division Street, MS–36, Port Orchard, WA 98366.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 16, 2019	530092
Wyoming:						
Natrona	City of Casper (18–08–0276P).	The Honorable Charlie Powell, Mayor, City of Casper, 200 North David Street, Room 203, Casper, WY 82601.	City Hall, 200 North David Street, Casper, WY 82601.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 27, 2019	560037
Natrona	Unincorporated Areas of Natrona County (18–08–0276P).	Mr. Forrest Chadwick, Commissioner, Natrona County, 200 North Center Street, Suite 115, Casper, WY 82601.	Natrona County, Board of Commissioners, 200 North Center Street, Casper, WY 82601.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 27, 2019	560036

[FR Doc. 2019–20481 Filed 9–20–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2649–20]

RIN 1615–ZB72

Extension of the Designation of Syria for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Syria for Temporary Protected Status (TPS) for 18 months, from October 1, 2019, through March 31, 2021. The extension allows currently eligible TPS beneficiaries to retain TPS through March 31, 2021, so long as they otherwise continue to meet the eligibility requirements for TPS.

This Notice also sets forth procedures necessary for nationals of Syria (or aliens having no nationality who last habitually resided in Syria) to re-register for TPS and to apply for Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a March 31, 2021 expiration date to eligible beneficiaries under Syria's TPS designation who timely re-register and apply for EADs under this extension.

DATES: *Extension of Designation of Syria for TPS:* The 18-month extension of the TPS designation of Syria is effective October 1, 2019, and will remain in effect through March 31, 2021. The 60-day re-registration period runs from September 23, 2019 through November 22, 2019. (Note: It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- You may contact Samantha Deshommes, Branch Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit the USCIS TPS web page at *http://www.uscis.gov/tps.* You can find specific information about this extension of Syria's TPS designation by

selecting ''Syria'' from the menu on the left side of the TPS web page.

• If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283.

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

• Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
FR—Federal Register
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Through this Notice, DHS sets forth procedures necessary for eligible nationals of Syria (or aliens having no nationality who last habitually resided in Syria) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to persons who have previously registered for TPS under the designation of Syria and whose applications have been granted.

For individuals who have already been granted TPS under Syria's designation, the 60-day re-registration period runs from September 23, 2019 through November 22, 2019. USCIS will issue new EADs with a March 31, 2021 expiration date to eligible Syrian TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs before their current EADs expire on September 30, 2019. Accordingly, through this **Federal Register** Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Syria for 180 days, through March 28, 2020. Additionally, individuals who have EADs with an expiration date of March 31, 2018, and who applied for a new EAD during the last re-registration period but have not yet received their new EADs are also covered by this automatic extension. These individuals may show their EAD indicating a March 31, 2018, expiration date and their EAD application receipt (Notice of Action, Form I–797C) that notes the application was received on or after March 5, 2018, to employers as proof of continued employment authorization through March 28, 2020. This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Syria TPS Form I–821 and/or Form I–765 that was still pending as of September 23, 2019 do not need to file either application again. If the TPS application is approved, the individual will be granted TPS through March 31, 2021. Similarly, if a pending TPS-related application for an EAD is approved, it will be valid through the same date. There are approximately 7,000 current beneficiaries under Syria's TPS designation.

What is temporary protected status (TPS)?

• TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the INA, or to eligible persons without nationality who last habitually resided in the designated country.

• During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.

• TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.

• The granting of TPS does not result in or lead to lawful permanent resident status.

• To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

• When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

When was Syria designated for TPS?

Former Secretary of Homeland Security Napolitano initially designated Syria for TPS on March 29, 2012, based on extraordinary and temporary conditions resulting from the Syrian military's violent suppression of opposition to President Bashar al-Assad's regime that prevented Syrian nationals from safely returning to Syria. *See Designation of Syrian Arab Republic for Temporary Protected Status,* 77 FR 19026 (Mar. 29, 2012). Following the initial designation, former Secretaries Napolitano and Johnson extended and newly designated Syria for TPS three times. In 2016, former Secretary Johnson both extended Syria's designation and newly designated Syria for TPS for 18 months through March 30, 2018. *See Extension and Redesignation of Syria for Temporary Protected Status,* 81 FR 50533 (Aug. 1, 2016). Most recently, in 2018, former Secretary Nielsen extended Syria's designation for 18 months, though September 30, 2019. *See Extension of the Designation of Syria for Temporary Protected Status,* 83 FR 9329 (March 5, 2018).

What authority does the Secretary have to extend the designation of Syria for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, or termination of or extension of a designation. The Secretary, in his discretion, may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that the foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Syria through March 31, 2021?

DHS has reviewed conditions in Syria. Based on the review, including input received from other U.S. Government agencies, the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Syria's TPS designation remain.

Syria remains engulfed in an ongoing civil war marked by brutal violence against civilians, egregious human rights violations and abuses, and a humanitarian disaster on a devastating scale across the country. The Syrian Arab Republic Government (SARG) continues to arbitrarily and unlawfully kill, torture, and detain civilians on a large scale, and non-state armed groups of varying ideologies exert control over civilians in wide areas of the country. The SARG, with the support of government-linked paramilitary groups, Iranian and Iranian-backed proxy forces, and Russian forces, continues to engage in hostilities with Syrian opposition forces. In addition, following its incursion into northern Syria in early 2018, the Turkish military and Turkish-backed groups continue to fight the Kurdish People's Protection Units (YPG). Following the defeat of the self-described Islamic State of Iraq and Syria (ISIS) in March 2019, ISIS sleeper cells have stepped up insurgency operations in cities controlled by the Syrian Democratic Forces (SDF). On January 16, 2019, a suicide bombing claimed by ISIS killed four Americans and 15 others in the northern city of Manbij, in Aleppo province. One week later, a vehicle-borne improvised explosive device targeted a joint American-SDF patrol in the town of Ash Shaddadi in Hasakah province. At least 10 people were killed June 1, 2019, in ISIS attacks in Raqqa. Despite a September 2018 agreement between Russia and Turkey that designated Idlib province and surrounding areas a demilitarized zone, non-state armed organizations, including designated terrorist groups, have continued to fight each other within the zone. In January 2019, Hayat Tahrir Al-Sham (HTS) seized large areas of Idlib from rival armed groups, constituting a significant threat to Syrian civilians in the country's northwest and northeast, as well as Syrian refugees residing across the adjacent Turkish border. Since April 2019, a renewed SARG offensive is exacting a heavy toll on civilians and civilian infrastructure in the area. The renewed violence has displaced over 630,000 civilians, and killed at least 1,089 civilians, including many children.

Currently, 11.9 million Syrians are displaced in or outside of Syria, of which 6.2 million are Internally Displaced Persons (IDPs) and 5.7 million are UNHCR-registered refugees. Of the country's 23 million people, 11.7 million require humanitarian assistance. Approximately 1.6 million Syrians were displaced by hostilities in 2018, and the overall IDP population increased 16% in 2018. Syria hosted approximately 482,200 refugees during the same time period. Additionally, 1.4 million Syrian IDPs voluntarily returned to their home areas in 2018. Just over 56,047 refugees returned to Syria in 2018, and as of March 2019, 21,575 had returned. Despite the significant number of spontaneous refugee and IDP returns in 2018 and 2019, the United Nations High Commissioner for Refugees (UNHCR) assessed in February 2019 that ''present conditions in Syria are not conducive for voluntary repatriation in safety and dignity as significant risks remain for civilians across the country.''

Syria's economy has significantly deteriorated since the outbreak of conflict in 2011, with economic output declining by more than 70% from 2011 to 2017, the most recent year for which confirmed economic data is available. Eight in ten Syrians live below the poverty line. Syria ranks last in the CIA World Factbook's survey of 224 countries in real annual Gross Domestic Product (GDP) growth rate, and 194th in GDP per capita.

Civilian health needs remain critical in Syria due to the ongoing conflict, and access to medical care is limited. Hundreds of thousands of civilians have suffered injuries, of which 45% are expected to sustain permanent impairment and require lifelong medical attention. As of March 2019, 46% of Syrian healthcare facilities are either partially functional or not functional, and 167 have been completely destroyed. Mass displacement has contributed to a reduction of up to 50% of qualified medical personnel in some areas, further compromising the provision of quality medical assistance. The SARG continues to attack healthcare personnel and infrastructure, with the United Nations reporting 142 confirmed attacks on healthcare personnel, facilities, supplies, patients, warehouses, and transport in 2018.

As of April 2019, 9 million people in Syria required food assistance, including 6.5 million people facing life-threatening food insecurity. Notwithstanding the ongoing challenges, food security increased in some areas in 2018 due to improvements in overall market accessibility and increased response efforts.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions supporting Syria's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Syria and, due to such conflict, requiring the return to Syria of Syrian nationals (or aliens having no nationality who last habitually resided in Syria) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Syria that prevent Syrian nationals (or aliens having no nationality who last habitually resided in Syria) from returning to Syria in safety, and it is not contrary to the national interest of the United States to permit Syrian TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Syria for TPS should be extended for an 18-month period, from October 1, 2019 through March 31, 2021. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Syria

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, the conditions supporting Syria's designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Syria for 18 months, from October 1, 2019, through March 31, 2021. *See* INA section 244(b)(1)(A), (b)(1)(C); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C).

Kevin McAleenan,

Acting Secretary.

Required Application Forms and Application Fees To Re-register for TPS

To re-register for TPS based on the designation of Syria, you *must* submit an Application for Temporary Protected Status (Form I–821). You do not need to pay the filing fee for the Form I–821. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. Please see additional information under the ''Biometric Services Fee'' section of this Notice.

Through this **Federal Register** Notice, your existing EAD issued under the TPS designation of Syria with the expiration date of September 30, 2019, is automatically extended for 180 days, through March 28, 2020. Although not required to do so, if you want to obtain a new EAD valid through March 31, 2021, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or request a fee waiver). If you do not want a new EAD, you do not have to file Form I–765 and pay the Form I–765 fee. If you do not want to request a new EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

Additionally, individuals who have EADs with an expiration date of March 31, 2018, and who applied for a new EAD during the last re-registration period but have not yet received their new EADs are also covered by this automatic EAD extension through March 28, 2020. You do not need to apply for a new EAD in order to benefit from this 180-day automatic extension. If you have a Form I–821 and/or Form I–765 that was still pending as of September 23, 2019, then you do not need to file either application again. If your pending TPS application is approved, you will be granted TPS through March 31, 2021. Similarly, if you have a pending TPS-related application for an EAD that is approved, it will be valid through the same date.

You may file the application for a new EAD either prior to or after your current EAD has expired. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by March 28, 2020.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *http://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may complete a Form I–912 or submit a personal letter requesting a fee waiver, with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS website at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

Refiling a TPS Re-Registration Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. This situation will be reviewed to determine whether you established good cause for late TPS re-registration. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *http://www.uscis.gov/tps.* Following denial of your fee waiver request, you may also refile your Form I–765 with fee either with your Form I–821 or at a later time, if you choose.

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of re-registration, and could wait to seek an EAD until after USCIS has approved your TPS re-registration application. If you choose to do this, to re-register for TPS you would only need to file the Form I–821 with the biometrics services fee, if applicable, (or request a fee waiver).

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you would like to send your application by:	Then, mail your application to:
U.S. Postal Service	U.S. Citizenship and Immigration Services, Attn: TPS Syria, P.O. Box 6943, Chicago, IL 60680–6943.
A non-U.S. Postal Service courier	U.S. Citizenship and Immigration Services, Attn: TPS Syria, 131 S Dearborn Street—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us to verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at *www.uscis.gov/tps* under ''Syria.''

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Contact Center at 800–375–5283 (TTY 800–767–1833). If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Contact Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 180-day extension of my current EAD through March 28, 2020, using this ***Federal Register*** *Notice?*

Yes. Provided that you currently have a Syria TPS-based EAD, this **Federal Register** Notice automatically extends your EAD through March 28, 2020, if you:

- Are a national of Syria (or an alien having no nationality who last habitually resided in Syria); and either
- Have an EAD with a marked expiration date of September 30, 2019, bearing the notation A–12 or C–19 on the face of the card under Category, or
- Have an EAD with a marked expiration date of March 31, 2018 bearing the notation A–12 or C–19 on the face of the card under Category and you applied for a new EAD during the last re-registration period but have not yet received a new EAD.

Although this **Federal Register** Notice automatically extends your EAD through March 28, 2020, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find the Lists of Acceptable Documents on the ''Acceptable Documents'' web page for Form I–9 at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *http://www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. If your EAD has an expiration date of September 30, 2019, or March 31, 2018 (and you applied for a new EAD during the last re-registration period but have not yet received a new EAD), and states A–12 or C–19 under Category, it has been extended automatically by virtue of this **Federal Register** Notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through March 28, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. If you have an EAD with a marked expiration date of September 30, 2019, that states A–12 or C–19 under Category, and you properly filed for a new EAD in accordance with this Notice, you will also receive Form I–797C, Notice of Action that will state your EAD is automatically extended for 180 days. You may choose to present your EAD to your employer together with this Form I–797C as a List A document that provides evidence of your identity and employment authorization for Form I–9 through March 28, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. See the subsection titled, ''How do my employer and I complete the Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?'' for further information.

To reduce confusion over this extension at the time of hire, you should explain to your employer that your EAD has been automatically extended through March 28, 2020. You may also provide your employer with a copy of this **Federal Register** Notice, which explains that your EAD has been automatically extended. As an alternative to presenting evidence of your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

What documentation may I present to my employer for Employment Eligibility Verification (Form I–9) if I am already employed but my current TPS-related EAD is set to expire?

Even though your EAD has been automatically extended, your employer is required by law to ask you about your continued employment authorization no later than before you start work on October 1, 2019. You will need to present your employer with evidence that you are still authorized to work. Once presented, your employer should note the automatic extension date from this **Federal Register** Notice in the Additional Information field in Section 2 of Form I–9. See the subsection titled, ''What updates should my current employer make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?'' for further information. You may show this **Federal Register** Notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through March 28, 2020. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of this EAD when you initially presented it. In addition, if you have an EAD with a marked expiration date of September 30, 2019 that states A–12 or C–19 under Category, and you

properly filed your Form I–765 to obtain a new EAD, you will receive a Form I–797C, Notice of Action. Form I–797C will state that your EAD is automatically extended for up to 180 days. You may present Form I–797C to your employer along with your EAD to confirm that the validity of your EAD has been automatically extended through March 28, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. To reduce the possibility of gaps in your employment authorization documentation, you should file your Form I–765 to request a new EAD as early as possible during the re-registration period.

The last day of the automatic EAD extension is March 28, 2020. Before you start work on March 29, 2020, your employer must reverify your employment authorization in Section 3 of Form I–9, using the most current version available at *http://www.uscis.gov/I-9.* At that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Note that your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Syrian citizenship?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 ''Lists of Acceptable Documents'' that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Syrian citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that has been automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and relates to you. Refer to the Note to Employees section of this **Federal Register** Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before March 29, 2020, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter March 28, 2020 as the ''expiration date''; and

b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a September 30, 2019, expiration date (or March 31, 2018 expiration date provided the employee applied for a new EAD during the last re-registration period but has not yet received a new EAD);

b. Write in the document title;

c. Enter the issuing authority;

d. Enter either the employee's Alien Registration number or USCIS number from Section 1 in the Document Number field on Form I–9; and

e. Write March 28, 2020, as the expiration date.

Before the start of work on March 29, 2020, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What updates should my current employer make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Determine if the EAD is auto-extended by ensuring:

a. It contains Category A–12 or C–19; and

b. Has a Card Expires date of September 30, 2019, or March 31, 2018 if the employee applied for a new EAD during the last re-registration period but has not yet received a new EAD.

2. Enter EAD EXT and March 28, 2020 in the Additional Information field; and

3. Initial and date the update.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day automatic extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By March 29, 2020, when the employee's automatically extended EAD has expired, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for these employees by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before March 29, 2020, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the

U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I–9 differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and on the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

(1) Your current EAD;

(2) A copy of your Notice of Action (Form I–797C), the notice of receipt, for your application to renew your current EAD providing an automatic extension of your currently expired or expiring EAD;

(3) A copy of your Notice of Action (Form I–797C), the notice of receipt, for your Application for Temporary Protected Status for this re-registration; and

(4) A copy of your Notice of Action (Form I–797), the notice of approval, for a past or current Application for Temporary Protected Status, if you received one from USCIS. Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, I–797, or I–94. You should present the agency with a copy of the relevant **Federal Register** Notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your alien or I–94 number. You should explain that SAVE will be able to verify the continuation of your TPS. You should ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response showing the TPS. You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or auto-extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *http://www.uscis.gov/save.*

[FR Doc. 2019–20457 Filed 9–20–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–N086; FXES11140100000–190–FF01E00000]

Habitat Conservation Plan for the Yelm Pocket Gopher; Incidental Take Permit Application in Thurston County, Washington; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from M-Gopher, LLC, for an incidental take permit (ITP) pursuant to the Endangered Species Act. The ITP would authorize ''take'' of the Yelm subspecies of the Mazama pocket gopher, incidental to otherwise lawful activities during construction of a single-family home in Thurston County, Washington. The application includes a habitat conservation plan (HCP) with

measures to minimize and mitigate the impacts of the taking of the Yelm pocket gopher. We have also prepared a draft environmental action statement (EAS) that includes our preliminary determination that the ITP decision may be eligible for categorical exclusion under the National Environmental Policy Act. We provide this notice to open a public comment period and to invite comments from all interested parties regarding the above-referenced documents.

DATES: To ensure consideration, please submit written comments by October 23, 2019.

ADDRESSES: To access or request documents, request further information, and/or submit written comments, please use the following methods:

- *Internet:* You may view or download copies of the HCP and EAS, and obtain additional information, at *http://www.fws.gov/wafwo/.*
- *Email: wfwocomments@fws.gov.* Include ''M-Gopher HCP'' in the subject line of the message.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–R1–ES–2019–N086; U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office; 510 Desmond Drive SE, Suite 102; Lacey, WA 98503.
- *In-Person Drop-off, Viewing, or Pickup:* Call 360–753–5823 to make an appointment (necessary for viewing or picking up documents only) during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Conservation Planning and Hydropower Branch Manager, Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone: 360–753–5823. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). M-Gopher, LLC (the applicant), requests a 7-year permit term that would authorize ''take'' of the Yelm subspecies of the Mazama pocket gopher (*Thomomys mazama yelmensis*), hereafter referred to as Yelm pocket gopher, incidental to construction of one single-family home on land in Thurston County, Washington. This species is listed as threatened under the ESA. The application includes a habitat conservation plan (HCP) that describes actions the applicant will take to minimize and mitigate the impacts of the taking on the Yelm pocket gopher. We have prepared an environmental action statement (EAS) for the Service's proposed action, in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). The EAS includes our preliminary determination that the ITP decision may be eligible for categorical exclusion under NEPA.

Background

Section 9 of the ESA and its implementing regulations in title 50 of the Code of Federal Regulations prohibit ''take'' of fish and wildlife species listed as endangered or threatened. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Regulations governing permits for endangered and threatened species are found in 50 CFR 17.22 and 17.32, respectively.

Proposed Action

The Service proposes to issue the requested ITP based on the applicant's commitments to implement the HCP, if permit issuance criteria are met. Covered activities include construction of a single-family home. The area covered under the M-Gopher, LLC, HCP consists of an approximately 0.75-acre project development site, and purchase of a 1-acre mitigation area at an offsite location, the Leitner Prairie conservation site. Take of the Yelm pocket gopher would occur within the development site. Offsetting the impacts of the taking of the Yelm pocket gopher would occur through the permanent protection of the mitigation area. Funding for the management of the mitigation site would be assured as described in the HCP.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request information, views, and suggestions from interested parties regarding our proposed Federal action, including adequacy of the HCP pursuant to the requirements for permits at 50 CFR parts 13 and 17 and adequacy of the EAS pursuant to NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA and NEPA and their respective implementing regulations (50 CFR 17.32 and 40 CFR 1506.6).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–20544 Filed 9–20–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLAZ921000.L14400000.BJ0000. LXSSA2250000.241A]

Notice of Filing of Plat of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled

to be officially filed 30 days after the date of this publication in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. Protests of any of these surveys should be sent to the Arizona State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Davis, Chief Cadastral Surveyor of Arizona; (602) 417–9558; *gtdavis@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat, in one sheet, representing the survey of the east and west boundaries, the subdivisional lines, and the subdivision of certain sections, Township 36 North, Range 15 East, accepted September 12, 2019, for Group 1186, Arizona.

This plat was prepared at the request of the United States Bureau of Indian Affairs.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and metes-and bounds surveys in section 8, Township 18 North, Range 24 East, accepted September 12, 2019, for Group 1191, Arizona.

This plat was prepared at the request of the United States National Park Service.

The San Bernardino Meridian, Arizona

The supplemental plat, in one sheet, showing the amended lotting in sections 28 and 29, Township 16 South, Range 22 East, accepted September 12, 2019, for Group 9116, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Gerald T. Davis,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2019–20542 Filed 9–20–19; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–SERO–BISO–NPS0027182; PPSESEROC3, PPMPSAS1Y.YP0000]

Determination of Eligibility for Consideration as Wilderness Areas, Big South Fork National River and Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of determination of wilderness eligibility for lands in Big South Fork National River and Recreation Area.

SUMMARY: Pursuant to the Wilderness Act of 1964, and in accordance with National Park Service (NPS) *Management Policies* (2006), Section 6.2.1, the NPS has completed a Wilderness Eligibility Assessment to determine if lands within Big South Fork National River and Recreation Area (Big South Fork NRRA) meet criteria indicating eligibility for preservation as wilderness. The lands subject to the assessment were those identified in the park's General Management Plan as being within the Natural Environment Recreation Zone and the Sensitive Resource Protection Zone. All other zones in the plan are development zones. Based on the assessment, the NPS has concluded that the assessed lands: (1) Are not predominantly roadless and undeveloped; (2) are not greater than 5,000 acres in size or of sufficient size as to make practicable their preservation and use in an unimpaired condition; and (3) do not meet the wilderness character criteria listed in the Wilderness Act and NPS Management Policies (2006). As a result of these findings, the NPS has determined that lands within Big South Fork NRRA do not warrant further study for possible designation as wilderness at this time. An updated eligibility assessment may be warranted in the future as lands in the park recover from past human disturbance.

ADDRESSES: A map of the lands assessed is on file at Big South Fork National River and Recreation Area Headquarters, 4564 Leatherwood Road, Oneida, Tennessee 37841.

FOR FURTHER INFORMATION CONTACT: Superintendent Niki Stephanie Nicholas, Big South Fork National River and Recreation Area, by phone at 423–569–9778, via email at *BISO_Superintendent@nps.gov,* or by mail at Big South Fork National River and Recreation Area, 4564 Leatherwood Road, Oneida, Tennessee 37841.

SUPPLEMENTARY INFORMATION: Big South Fork NRRA comprises 125,310 acres on the Cumberland Plateau of eastern Tennessee and southern Kentucky. Of this total, 116,309 acres are in Federal ownership. Big South Fork NRRA has been affected by past extractive activities, including farming, logging, sub-surface coal mining, and drilling for oil and gas.

Staff of the Big South Fork NRRA reviewed the Primary Eligibility Criteria found in Section 6.2.1.1 of NPS *Management Policies* to evaluate the park's wilderness eligibility. The eligibility assessment initially identified seven areas in the park that are undeveloped, appear to have been affected primarily by the forces of nature, and offer opportunities for solitude and an unconfined type of recreation. These areas range in size from 279.2 acres to 3,655.7 acres. None is over 5,000 acres in size, or, given the nature of adjacent recreational and management activities, of sufficient size to make practicable its preservation and use as wilderness in an unimpaired condition. Furthermore, none of these areas is untrammeled. Due to their small size, each must be actively managed to control the effects of fire, deal with invasive species, and ameliorate the impacts of prior human disturbance. Accordingly, the NPS has determined that none of the acreage administered by the NPS at Big South Fork NRRA is eligible for designation as wilderness.

A public notice announcing the NPS's intention to conduct this eligibility assessment was placed in the **Federal Register** on December 20, 2016. A previous press release had been issued to local media on March 6, 2007

informing the public of the assessment process. The NPS received no comments on either the press release or the subsequent notice.

Given that no lands at Big South Fork NRRA currently eligible for wilderness consideration, no wilderness study will be undertaken pursuant to *Management Policies* Section 2.2.2 to develop a recommendation to Congress for wilderness designation.

Dated: August 5, 2019.

Robert A. Vogel,

Regional Director.

[FR Doc. 2019–20559 Filed 9–20–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–SERO–OBRI–NPS0027212; PPSESEROC3, PPMPSAS1Y.YP0000]

Determination of Eligibility for Consideration as Wilderness Areas, Obed Wild and Scenic River

AGENCY: National Park Service, Interior.

ACTION: Notice of determination of wilderness eligibility for lands in Obed Wild and Scenic River.

SUMMARY: Pursuant to the Wilderness Act of 1964, and in accordance with National Park Service (NPS) *Management Policies* (2006), Section 6.2.1, the NPS has completed a Wilderness Eligibility Assessment to determine if lands within Obed Wild and Scenic River (Obed WSR) meet criteria indicating eligibility for preservation as wilderness. Based on the assessment, the NPS has concluded that the assessed lands: (1) Are not predominantly roadless and undeveloped; (2) are not greater than 5,000 acres in size or of sufficient size as to make practicable their preservation and use in an unimpaired condition; and (3) do not meet the wilderness character criteria listed in the Wilderness Act and NPS Management Policies (2006). As a result of these findings, the NPS has determined that lands within the Obed WSR do not warrant further study for possible designation as wilderness.

ADDRESSES: A map of the lands assessed is on file at Big South Fork National River and Recreation Area Headquarters, 4564 Leatherwood Road, Oneida, Tennessee 37841.

FOR FURTHER INFORMATION CONTACT: Superintendent Niki Stephanie Nicholas, Obed Wild and Scenic River, by phone at 423–569–9778, via email at *OBRI_Superintendent@nps.gov,* or by mail at Big South Fork National River and Recreation Area, 4564 Leatherwood Road, Oneida, Tennessee 37841.

SUPPLEMENTARY INFORMATION: Obed WSR comprises approximately 5,530 acres on the Cumberland Plateau of eastern Tennessee. The wild and scenic designation encompasses 45 miles of the Obed River and its tributaries, including Clear Creek, Daddys Creek, and the Emory River. Of the total acreage within the boundary, only about 2,664 acres, in noncontiguous tracts, are owned in fee by the Federal government.

The Primary Eligibility Criteria found in Section 6.2.1.1 of NPS *Management Policies* was reviewed to evaluate Obed WSR's wilderness eligibility. Based on this review, the NPS has determined that none of the acreage administered by the NPS at Obed Wild and Scenic River is eligible for designation as wilderness. While parts of the wild and scenic river are roadless, undeveloped, and appear to have been affected primarily by the forces of nature, no single area is over 5,000 acres in size or is of sufficient size to make practicable its preservation and use as wilderness in an unimpaired condition. Areas owned in fee by the NPS are interspersed with lands owned by the State of Tennessee and by private parties. The fragmentation of the NPS fee lands and their small size precludes their effective management as wilderness.

A public notice announcing the NPS's intention to conduct this eligibility assessment was placed in the **Federal Register** on December 20, 2016. A previous press release had been issued to local media on August 22, 2016 informing the public of the assessment process. The NPS received no comments on either the press release or the subsequent notice.

Given that lands at Obed WSR are not eligible for wilderness consideration, a wilderness study will not be prepared pursuant to *Management Policies* Section 2.2.2.

Dated: September 5, 2019.

Robert A. Vogel,

Regional Director.

[FR Doc. 2019–20560 Filed 9–20–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2012–0006; DS63644000 DR2000000.CH7000 190D1113RT; OMB Control Number 1012–0005]

Agency Information Collection Activities: Federal Oil and Gas Valuation

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection with revisions. ONRR seeks renewed authority to collect information pertaining to (1) the Federal oil and gas valuation regulations, which include transportation and processing regulatory allowance limits; and (2) the accounting and auditing relief for marginal properties.

DATES: You must submit your written comments on or before November 22, 2019.

ADDRESSES: You may submit comments on this Information Collection Request (ICR) to ONRR by using one of the following three methods (please reference ''ICR 1012–0005'' in the subject line of your comments):

1. Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2012–0006'' and then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.

2. Email comments to Mr. Armand Southall, Regulatory Specialist, at *armand.southall@onrr.gov.*

3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 85, MS 64400B, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mr. Peter Christnacht, Royalty Valuation, ONRR, telephone at (303) 233–2225, or email to *Peter.Christnacht@onrr.gov.* For other questions, contact Mr. Armand Southall, telephone at (303) 231–3221, or email to *Armand.Southall@onrr.gov.* You may also contact Mr. Southall to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations requiring the subject collection of information.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (ICR) described below. We are especially interested in public comment addressing the following issues mentioned in the Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(1): (1) Is the collection necessary to perform the proper functions of ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ONRR enhance the quality, utility, and clarity of the information to be collected; and (5) how might ONRR minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. ONRR will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* We will include or summarize each comment in our request to OMB to approve this ICR. Before including your Personally Identifiable Information (PII), such as your address, phone number, email address, or other PII in your comment(s), you should be aware that your entire comment, including PII, may be made available to the public at any time. While you can ask us, in your comment, to withhold your PII from public view, we cannot guarantee that we will be able to do so. We also will post the ICR at *https://www.onrr.gov/Laws_R_D/FRNotices/ICR0136.htm.*

Abstract

The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary is charged to (1) manage mineral resources production from Federal and Indian lands and the OCS; (2) collect the royalties and other mineral revenues due; and (3) distribute the funds collected. We have posted the laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PubLaws/index.htm.*

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and sell, or otherwise dispose of, minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share of the production's value. The lessee, or its designee, must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals.

Information collections that we cover in this ICR are found at title 30 of the *Code of Federal Regulations* (CFR) parts:

- 1202, subparts C and D, which pertain to Federal oil and gas royalties.
- 1204, subpart C, which pertains to accounting and auditing relief for marginal properties.
- 1206, subparts C and D, which pertain to Federal oil and gas product valuation.

All data reported is subject to subsequent audit and adjustment.

In March 2019, the U.S. District Court for the Northern District of California vacated ONRR's 2017 Repeal rule of its 2016 Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform rule. By vacating ONRR's 2017 Repeal rule, the Court reinstated ONRR's 2016 Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform rule, originally published on July 1, 2016 (81 FR 43338) (2016 Valuation Rule), with its original effective date of January 1, 2017.

We have not revised the burden hours because a lessee could potentially revise reporting periods prior to January 1, 2017 (*i.e.,* periods under the old rule).

Information Collections

ONRR, acting for the Secretary, uses the information that we collect to ensure that lessees accurately value and appropriately pay all royalties based on the oil and gas produced from Federal onshore and offshore leases. ONRR and other Federal government entities, including the Bureau of Land Management, and the State governmental entities, use the information for audit purposes, and for evaluating the reasonableness of product valuation or allowance claims that lessees submit. Please refer to the *Data* section for the estimated total burden hours.

A. Federal Oil and Gas Valuation Regulations

The valuation regulations at 30 CFR part 1206, subparts C and D, mandate that lessees collect and/or submit information used to value their Federal oil and gas, including (1) transportation and processing allowances and (2) regulatory allowance limit information. Lessees report certain data on form ONRR–2014, [*Report of Sales and Royalty Remittance*] (OMB Control Number 1012–0004, *Royalty and Production Reporting*). The information that we request is the minimum necessary to carry out our mission and places the least possible burden on respondents. If ONRR does not collect this information, both Federal and State governments may incur a loss of royalties.

Transportation and Processing Regulatory Allowance Limits: Lessees may deduct the reasonable, actual costs of transportation and processing from Federal royalties. The lessees report these allowances on form ONRR–2014. For oil and gas, regulations establish the allowable limit on transportation allowance deductions at 50 percent of the value of the oil or gas. For gas only, regulations establish the allowable limit on processing allowance deductions at 66⅔ percent of the value of each gas plant product.

B. Accounting and Auditing Relief for Marginal Properties

In 2004, we amended our regulations to comply with section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. These regulations provide guidance for lessees and designees seeking accounting and auditing relief for qualifying Federal marginal properties. Under the regulations, both ONRR and the State concerned must approve any accounting and auditing relief granted for a marginal property.

OMB Approval

We will request OMB approval to continue to collect, from companies, lessees, and designees, information used (1) to value their Federal oil and gas, including transportation and processing allowances, and (2) to request accounting and auditing relief approval for qualifying Federal marginal properties. Not collecting this

information would limit the Secretary's ability to discharge fiduciary duties and may also result in the loss of royalty payments. We protect the proprietary information that we receive and do not collect items of a sensitive nature.

ONRR requires lessees to respond to information collections relating to valuing Federal oil and gas, including transportation and processing allowances. ONRR also requires that lessees submit the allowance information to obtain benefits for claiming allowances on form ONRR–2014. In addition, ONRR requires lessees to respond to information collections in regards to requesting approval for accounting and auditing relief.

Data

Title of Collection: Federal Oil and Gas Valuation—30 CFR parts 1202, 1204 and 1206.

OMB Control Number: 1012–0005.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 120 Federal lessees/designees and 7 States for Federal oil and gas.

Total Estimated Number of Annual Responses: 143.

Estimated Completion Time per Response: The average completion time is 70.06 hours per response. The average completion time calculated by dividing the total estimated burden hours (10,018) by the estimated annual responses (143) from the table below.

Total Estimated Number of Annual Burden Hours: 10,018 hours.

Respondent's Obligation: Submission of lessees' information used for valuing Federal oil and gas, including transportation and processing allowances, to ONRR is mandatory. Lessees and designees requesting accounting and auditing relief for qualifying Federal marginal properties is required to obtain or retain a benefit.

Frequency of Collection: Annually and on occasion.

Total Estimated Annual Nonhour Burden Cost: We have identified no ''nonhour'' cost burden associated with the collection of information.

We have not included in our estimates certain requirements that companies perform in the normal course of business and that ONRR considers usual and customary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2019–20473 Filed 9–20–19; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1174]

Certain Toner Cartridges, Components Thereof, and Systems Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Brother Industries, Ltd. of Japan, Brother International Corp. (U.S.A.) of Bridgewater, New Jersey, and Brother Industries (U.S.A., Inc.) of Bartlett, Tennessee. A supplement to the complaint was filed on August 20, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges, components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent No. 9,568,856 (''the '856 patent''); U.S. Patent No. 9,575,460 (''the '460 patent''); U.S. Patent No. 9,632,456 (''the '456 patent''); U.S. Patent No. 9,785,093 (''the '093 patent''); and U.S. Patent No. 9,846,387 (''the '387 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 17, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5, 10, and 12–15 of the '093 patent; claims 1, 7–11, 15, and 16 of the '460 patent; claims 1–7 and 9 of the '856 patent; claims 1, 4–5, and 9 of the '456 patent; and claims 1, 3, 5, 7–12, and 18 of the '387 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''laser toner cartridges designed for use with Brother printers, fax machines, and Multi-Function Centers ('MFCs')'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Brother Industries, Ltd., 15–1, Naeshiro-cho, Mizuho-ku Nagoya-shi, Aichi-ken, Japan 467–8561

Brother International Corporation (U.S.A.), 200 Crossing Boulevard, Bridgewater, NJ 08807
Brother Industries (U.S.A.), Inc., 7819 North Brother Boulevard, Bartlett, TN 38133

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AMI Brothers, Inc., 1001 Bayhill Drive, Suite 200, San Bruno, CA 94066
An An Beauty Limited, Flat/Room 2104 21/F, Mongkok Commercial Centre, 16 Argyle Street, Mongkok, Kowloon, Hong Kong 999077
Aster Graphics, Inc., 12000 Magnolia Avenue, Suite 101, Riverside, CA 92503
Aztech Enterprises Limited, Units 1206, 12/F, Cheuk Nang Center, 9 Hillwood Road, Kowloon, Hong Kong 999077
Billiontree Technology USA Inc., 19945 Harrison Avenue, City of Industry, CA 91789
Carlos Imaging Supplies, Inc., PMB 540, 17128 Colima Road, Hacienda Heights, CA 91745
Cartridge Evolution, Inc., 120 41st Street, Unit 3R, Brooklyn, New York 11232
Do it Wiser, LLC, 3422 Old Capital Trail, Suite 747, Wilmington, DE 19808
Eco Imaging Inc., PMB A839, 14252 Culver Drive, Irvine, CA 92604
Ecoolsmart Co., PMB 322, 17360 Colima Road, Rowland Heights, CA 91748
EPrinter Solution LLC, 2705 Pomona Boulevard, Pomona, CA 91768
E–Z Ink Inc., 120 41st Street, Unit 2R, Brooklyn, NY 11232
Globest Trading Inc., 1251 South Rockefeller Avenue, Unit B, Ontario, CA 91761
Greencycle Tech, Inc., 9638 Rush Street, Unit E, South El Monte, CA 91733
Hongkong Boze Co., Ltd., Flat/Room A 27/F, Billion Plaza 2, 10 Cheung Yee Street, Lai Chi Kok, Kowloon, Hong Kong 999077
I8 International, Inc., 19961 Harrison Avenue, City of Industry, CA 91789
IFree E-Commerce Co., Flat/Room B 8/F, Chong Ming Building, 72 Cheung Sha Wan Road, Kowloon, Hong Kong 999077
Ikong E-Commerce, PMB 429, 385 South Lemon Avenue, Suite E, Walnut, CA 91789
Intercon International Corp., PMB 109, 407 West Imperial Highway, Suite H, Brea, CA 92821
IPrint Enterprise Limited, Rooms 1318–19, 13/F, Hollywood Plaza, 610 Nathan Road, Mongkok, Kowloon, Hong Kong 999077
LD Products, Inc., 3700 Cover Street, Long Beach, CA 90808
Linkyo Corp., 629 South 6th Avenue, La Puente, CA 91746
Mangoket LLC, 1641 West Main Street, Suite 222, Alhambra, CA 91801
New Era Image LLC, 1499 Pomona Road, Suite G, Corona, CA 92882
OW Supplies Corp., 13445 Estelle Street, Corona, CA 92879
Solong E-Commerce Co., LLC, Flat/Room 19C, Lockhart Center, 301–307 Lockhart Road, Wan Chai, Hong Kong 999077
Smartjet E-Commerce Co., LLC, Flat/Room A 20/F, Kiu Fu Commercial Building, 300 Lockhart Road, Wan Chai, Hong Kong 999077
Super Warehouse Inc., 1160 Yew Avenue, DSS–5179, Blaine, WA 98230
Theresa Meng, 1424 Bath Avenue, Brooklyn, NY 11228
Triple Best LLC, 13858 Torrey Bella Court, San Diego, CA 92129
V4ink, Inc., PMB 296, 516 North Diamond Bar Boulevard, Diamond Bar, CA 91765
Zhuhai Xiaohui E-Commerce Co., Ltd., Room 502, Factory Five, No. 12, Pingdong 3rd Road, Nanping Keji Industrial Park, Xiangzhou District, Zhuhai, China 519000

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20461 Filed 9–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Third Review)]

Silicon Metal From Russia; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: September 6, 2019.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On September 6, 2019, the Commission

determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (84 FR 25561, June 3, 2019) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20463 Filed 9–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1175]

Certain Bone Cements and Bone Cement Accessories; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Zimmer, Inc. of Warsaw, Indiana and Zimmer US, Inc. of Warsaw, Indiana. The complaint alleges violations of section 337 based upon the importation into the United States and the sale of certain bone cements and bone cement accessories by reason of the misappropriation of trade secrets, false advertising, and tortious interference, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 16, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or in the sale of certain products identified in paragraph (2) by reason of the misappropriation of trade secrets, false advertising, or tortious interference, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''Heraeus' PALACOS® bone cements, including PALACOS® R, PALACOS® R+G, PALACOS® MV, PALACOS® MV+G, PALACOS® LV+G, PALACOS® LV, and other similar bone cements, as well as Heraeus' bone cement accessories, including the PALACOS® All-in-One Fixation Systems, the PALAMIX® vacuum mixing systems, the PALABOWL vacuum mixing bowls, and other similar accessories used for mixing and applying bone cements'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Zimmer, Inc., 1800 West Center Street, Warsaw, IN 46580

Zimmer US, Inc., 345 East Main Street, Warsaw, IN 46580

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Heraeus Medical GmbH, Philipp-Reis-Straße, 8–13, 61273 Wehrheim, Germany

Heraeus Medical LLC, 770 Township Line Road, Yardley, PA 19067

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20462 Filed 9–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–615–617 and 731–TA–1432–1434 (Final)]

Fabricated Structural Steel From Canada, China, and Mexico; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–615–617 and 731–TA–1432–1434 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fabricated structural steel from Canada, China, and Mexico, provided for in subheadings 7308.90.95, 7308.90.30, and 7308.90.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman ((202) 205–2610) or Stamen Borisson ((202) 205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope—For purposes of these investigations, Commerce has defined the subject merchandise as carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. Fabricated structural steel products are steel products that have been fabricated for erection or assembly into structures, including, but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities. Fabricated structural steel is manufactured from carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, and plate-work components. Fabrication includes, but is not limited to cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, grooving, adhesion, beveling, and riveting and may include items such as fasteners, nuts, bolts, rivets, screws, hinges, or joints.

The inclusion, attachment, joining, or assembly of non-steel components with fabricated structural steel does not remove the fabricated structural steel from the scope. Fabricated structural steel is covered by the scope of the investigations regardless of whether it is painted, varnished, or coated with plastics or other metallic or non-metallic substances and regardless of whether it is assembled or partially assembled, such as into modules, modularized construction units, or sub-assemblies of fabricated structural steel.

Subject merchandise includes fabricated structural steel that has been assembled or further processed in the subject country or a third country, including but not limited to painting, varnishing, trimming, cutting, drilling, welding, joining, bolting, punching, bending, beveling, riveting, galvanizing, coating, and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the fabricated structural steel.

All products that meet the written physical description of the merchandise covered by the investigations are within the scope of these investigations unless specifically excluded or covered by the scope of an existing order. For a complete scope description (specific exclusions), please refer to Certain Fabricated Structural Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 84 FR 47491, September 10, 2019, Appendix I.

The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590.[1]

Background—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and Mexico of fabricated structural steel, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on February 4, 2019, by American Institute of Steel Construction, LLC, Chicago, Illinois.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Although Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of fabricated structural steel from Canada, and imports of fabricated structural steel from Canada are not being or are not likely to be sold in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b)[2] so that the final phase of the investigations may proceed concurrently in the event that Commerce makes a final affirmative determination with respect to such imports.

Participation in the investigations and public service list—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to

[1] The products subject to the investigations may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

[2] Section 207.21(b) of the Commission's rules provides that, where Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 13, 2020, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, January 28, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 22, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on January 27, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 21, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 4, 2020. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before February 4, 2020. On February 18, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 20, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20493 Filed 9–20–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; FEL Out of Business Records

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0102 (FEL Out of Business Records) is being revised due to an increase in the number of respondents to this IC, which has also contributed to a rise in both the public burden hours and cost associated with this IC, since the last renewal in 2016.

DATES: Comments are encouraged and will be accepted for 30 days until October 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Ed Stely, Branch Chief, Tracing Operations and Records Management (TORM) either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Edward.Stely@atf.gov,* or by telephone at 304–260–1515. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer,

Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* FEL Out of Business Records.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: Per 27 CFR 555.128, when an explosive materials business or operation is discontinued, the records must be delivered to the ATF Out of Business Records Center within 30 days of the business or operation discontinuance.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 249 respondents will utilize this information collection, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 124.5 or 125 hours, which is equal to 249 (# of respondents) * 1 (# of responses per respondents) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include an increase in the total respondents and burden hours by 49 and 25 respectively, since the last renewal in 2016. Consequently, the cost burden has also risen by $8,842 since 2016.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–20492 Filed 9–20–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 12, 2019, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States of America* v. *Performance Diesel, Inc.,* Civil Action No. 4:19–cv–00075–DN.

The lawsuit seeks injunctive relief and civil penalties against Defendant Performance Diesel, Inc. (''PDI'') for violations of Sections 203(a)(3)(A) and (B) of the Clean Air Act, 42 U.S.C. 7522(a)(3)(A) and (B). The United States alleges that Defendant manufactured, sold, and in some cases installed at least 5,549 aftermarket products that have a principal effect of bypassing, defeating, or rendering inoperative emission controls installed on motor vehicles or motor vehicle engines, and that Defendant knew or should have known that these products would be put to such use. In both the complaint and proposed consent decree, these aftermarket products are referred to as ''subject products.'' Subject products do not include products that are covered by an Executive Order (''E.O.'') issued by the California Air Resources Board (''CARB'') or a pending ''complete application'' for a CARB E.O.

Under the proposed consent decree, Defendant would pay a civil penalty and implement measures to comply with the Clean Air Act. For instance, subject to a narrowly tailored exception for research and development, Defendant is prohibited from manufacturing, selling, or installing subject products. For any product that would otherwise qualify as a subject product, Defendant must demonstrate a reasonable basis that the product will not adversely affect vehicles emissions. Moreover, Defendant must (1) destroy all subject products (except those retained for research and development); (2) stop providing technical support for subject products; (3) revise its marketing materials; (4) provide notice to its employees and customers; (4) require its employees to forfeit any subject products; and (5) provide annual employee training. Defendant must also pay $1,100,000 in civil penalties based upon its demonstrated inability to pay a higher penalty. The proposed consent decree would resolve all Clean Air Act claims alleged by the United States against Defendant through the date the United States filed the complaint.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Performance Diesel, Inc.,* D.J. Ref. No. 90–5–2–1–11994. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.25 (25 cents per page

reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–20464 Filed 9–20–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by *Fax:* 202–395–5806 (this is not a toll-free number); or by *email: OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, *Attn:* Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by *email: DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed information collection. This data collection is necessary for the determination of the beginning, continuance, or termination of an Extended Benefit (EB) period in any State that determines the EB trigger rate. In addition, data on initial and continued claims are used to help determine economic indicators. Social Security Act section 303(a)(6) and 20 CFR 615.15 authorize this information collection. *See* 42 U.S.C. 303(a)(6) and Public Law 91–373, section 203.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0028.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 22, 2019 (84 FR 10837).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0028. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

OMB Control Number: 1205–0028.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 5,512.

Total Estimated Annual Time Burden: 3,675 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 17, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–20487 Filed 9–20–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of Employer Performance Measurement Approaches

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Policy, Chief

Evaluation Office (CEO) sponsored information collection request (ICR) proposal titled, ''Evaluation of Employer Performance Measurement Approaches,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201901-1290-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–CEO, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Evaluation of Employer Performance Measurement Approaches information collection. The U.S. Department of Labor (DOL) Chief Evaluation Office (CEO) is seeking Office of Management and Budget (OMB) approval to collect information from State and local public workforce system employees and partners, and to gather feedback from a group of U.S. employers, to inform the Analysis of Employer Performance Measurement Approaches study. The purpose of the study is to conduct a 36-month analysis of employer services measurement approaches and metrics, as well as their cross-State and cross-program applicability, with a goal of understanding and implementing a final indicator of performance. The study will explore and establish an understanding of employer services measurement and supplement the start-up of reporting by the States on the National Pilot measures. The Workforce Innovation and Opportunity Act authorizes this information collection.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on March 6, 2018 (83 FR 9548).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201901–1290–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–CEO.

Title of Collection: Evaluation of Employer Performance Measurement Approaches.

OMB ICR Reference Number: 201901–1290–001.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 603.

Total Estimated Number of Responses: 603.

Total Estimated Annual Time Burden: 204 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 16, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–20486 Filed 9–20–19; 8:45 am]

BILLING CODE 4510–HX–P

OFFICE OF MANAGEMENT AND BUDGET

Senior Executive Service Performance Review Board Membership

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) publishes the names of the members selected to serve on its Senior Executive Service (SES) Performance Review Board (PRB). This notice supersedes all previous notices of the PRB membership.

DATES: *Applicable:* August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah Whittle Spooner, Assistant Director for Management and Operations, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, 202–395–7402.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more PRBs. The PRB shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on OMB's PRB.

Kelly T. Colyar, Chief, Water and Power Branch

Jennifer L. Hanson, Chief, Income Maintenance Branch

Michelle Marston, Chief of Staff
Kirsten J. Moncada, Chief, Privacy Branch
Robert J. Nassif, Chief, Force Structure and Investment Branch
Sarah Whittle Spooner, Assistant Director for Management and Operations

Sarah Whittle Spooner,

Assistant Director for Management and Operations.

[FR Doc. 2019–20488 Filed 9–20–19; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[19–053]

Notice of Centennial Challenges CO_2 Conversion Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges CO_2 Conversion Challenge.

SUMMARY: Phase 2 of the CO_2 Conversion Challenge is open, and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. This competition has two phases with a total prize purse of up to $1 million. Phase 1 (completed in April 2019) was the Concept Phase with a prize purse of $250,000 awarded equality among the top five scoring teams. Teams were asked to demonstrate capabilities to develop technologies to manufacture ''food'' for microbial bioreactors from CO_2 and hydrogen molecules, with the ultimate goal of producing glucose. Phase 2 is a Demonstration Challenge with a prize purse of up to $750,000. NASA is providing the prize purse, and NASA Centennial Challenges will be managing the Challenge with support from The Common Pool.

DATES: Challenge registration for Phase 2 opens September 19, 2019, and will remain open until 6:00 p.m. Eastern Time on November 30, 2019. Teams must submit their application by June 5, 2020. The competition will conclude in September.

Other important dates:

March 1–31, 2020—Optional Challenge Mid-Point Progress Updates Due
June 5, 2020—Application Deadline
September 2020—Winners Announced

ADDRESSES: The CO_2 Conversion Challenge Phase 2 competitors will initially register and submit an application explaining components of their system and its operation virtually via electronic submissions. Upon review of a team's registration and eligibility, a judge will schedule a site visit to the team's laboratory to observe the successful operation of the system and collect a sample. The sample will then be collected and sent to an independent laboratory for analysis. Phase 2 will be executed at the participants' facility or lab.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the CO_2 Conversion Challenge please visit: *https://www.co2conversionchallenge.org/.* For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Monsi Roman, Centennial Challenges Program, NASA Marshall Space Flight Center, Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

Competitors are required to build, demonstrate and produce a product from a system that manufactures simple sugars for microbial bioreactors from CO_2 and hydrogen molecules, with the ultimate goal of producing glucose.

Future planetary habitats on Mars will require a high degree of self-sufficiency. This requires a concerted effort to both effectively recycle supplies brought from Earth and use local resources such as CO_2, water and regolith to manufacture mission-relevant products. Human life support and habitation systems will treat wastewater to make drinking water, recover oxygen from CO_2, convert solid wastes to useable products, grow food, and specially design equipment and develop equipment packaging to allow reuse in alternate forms. In addition, In-Situ resource utilization (ISRU) techniques will use available local materials to generate substantial quantities of products to supply life support needs, propellants and building materials, and support other In-Space manufacturing (ISM) activities.

Many of these required mission products such as food, nutrients, medicines, plastics, fuels, and adhesives are organic, and are comprised mostly of carbon, hydrogen, oxygen and nitrogen molecules. These molecules are readily available within the Martian atmosphere (CO_2, N_2) and surface water (H_2O), and could be used as the feedstock to produce an array of desired products. While some products will be most efficiently made using physicochemical methods or photosynthetic organisms such as plants and algae, many products may best be produced using heterotrophic (organic substrate utilizing) microbial production systems. Terrestrially, commercial heterotrophic bioreactor systems utilize fast growing microbes combined with high concentrations of readily metabolized organic substrates, such as sugars, to enable very rapid rates of bio-product generation.

The type of organic substrate used strongly affects the efficiency of the microbial system. For example, while an organism may be able to use simple organic compounds such as formate (1-carbon) and acetate (2-carbon), these ''low-energy'' substrates will typically result in poor growth. In order to maximize the rate of growth and reduce system size and mass, organic substrates that are rich in energy and carbon, such as sugars, are needed. Sugars such as D-Glucose, a six-carbon sugar that is used by a wide variety of model heterotrophic microbes, is typically the preferred organic substrate for commercial terrestrial microbial production systems and experimentation. There are a wide range of other compounds, such as less complex sugars and glycerol that could also support relatively rapid rates of growth.

To effectively employ microbial bio-manufacturing platforms on planetary bodies such as Mars, it is vital that the carbon substrates be made on-site using local materials. However, generating complex compounds like glucose on Mars presents an array of challenges. While sugar-based substrates are inexpensively made in bulk on Earth from plant biomass, this approach is currently not feasible in space. Alternatively, current physicochemical processes such as photo/electrochemical and thermal catalytic systems are able to make smaller organic compounds such as methane, formate, acetate and some alcohols from CO_2; however, these systems have not been developed to make more complex organic molecules, such as sugars, primarily because of difficult technical challenges combined with the low cost of obtaining sugars from alternate methods on Earth. Novel research and development is required to create the physicochemical systems required to directly make more complex molecules from CO_2 in space environments. It is hoped that advancements in the generation of suitable microbial substrates will spur interest in making complex organic compounds from CO_2 that could also serve as feedstock molecules in traditional terrestrial chemical synthesis and manufacturing operations.

The CO_2 Conversion Challenge is devoted to fostering the development of CO_2 conversion systems that can effectively produce singular or multiple molecular compounds identified as desired microbial manufacturing ingredients and/or that provide a significant advancement of physicochemical CO_2 conversion for the production of useful molecules.

I. Prize Amounts

Phase 2 of the CO_2 Conversion Challenge will award to up to three (3) top teams, who will receive prizes from a prize purse of $750,000 (seven-hundred fifty thousand dollars). Teams will be required to submit: (1) An application containing a description of the physiochemical conversion system they will build to demonstrate the production of carbon-based molecular compounds and (2) a video of the system in operation that clearly depicts the overall component and operation of the system. Upon completion of a phone interview with a judge, teams will be required to host a site visit by a judge where the operation of the system is demonstrated and a sample to be analyzed is produced and collected. The team's product will be examined using an independent chemical analysis to determine if any of the targeted compounds are present.

Challenge targeted compounds	Weighting factor
D-Glucose	100
Other 6-carbon sugars (D-hexoses)	80
5-carbon sugars (D-pentoses)	50
4-carbon sugars (D-tetroses)	10
3-carbon sugars (D-trioses)	5
D-Glycerol	5

If enantiomers of the targeted compounds are present, the mass of each will be measured. The total score will be calculated by taking the mass of the most desired enantiomer ''D'' form minus the mass of the undesired ''L'' form. For example, if equal amounts of ''D'' and ''L'' glucose are found, then no points will be given for that compound.

The three highest scoring teams will be awarded the following prizes:

First place—$350,000 (three hundred fifty thousand U.S. dollars)

Second place—$200,000 (two hundred thousand U.S. dollars)

Third place—$100,000 (one hundred thousand U.S. dollars)

In the event of a tie score between two or more teams, the corresponding award(s) will be divided evenly among the teams. For example, a tie for first place will result in both teams receiving ($350,000 + $200,000)/2 = $275,000.

$100,000 bonus prizes awarded to as many three (3) teams.

Bonus Prize—System Effectiveness for Space Mission Applications: The information provided in the Demonstration Application as well as information gathered during the on-site judging event will be used by the judging panel to assess the overall system effectiveness for future application in space missions. A total of $100,000 will be available for bonus prizes in amounts determined by the judges for up to 3 teams. Teams do not need to win one of the contest prizes to be awarded a Bonus Prize. The top score will receive $50,000 and the next two highest scores will receive $25,000. A minimum score of 65 points is required to be eligible for a bonus prize.

II. Eligibility

To be eligible to win a prize, competitors must;

(1) NASA welcomes applications from individuals, companies, or other entities that have an official legal status under applicable law (state, federal or country) and that are in good standing in the jurisdiction under which they are organized with the following restrictions:

(a) *Individuals participating singly or in a group must be* U.S. citizens or permanent residents of the United States *and must be* 18 years of age or older.

(b) *Private entities must be* incorporated in *and* maintaining a primary place of business in the United States.

(c) *Teams must be* comprised of otherwise eligible individuals or entities, *and* led by an otherwise eligible individual or entity.

(2) Register on the challenge website and comply with all requirements in the rules and team agreement.

(3) U.S. government employees may enter the competition, or be members of prize-eligible teams, so long as they are not acting within the scope of their federal employment, and they rely on no facilities, access, personnel, knowledge or other resources that are available to them as a result of their employment except for those resources available to all other participants on an equal basis. For additional information regarding government employee participation see *https://www.co2 conversionchallenge.org/.*

(4) *Teams must* conduct their demonstration work in facilities based in the United States, to include AK, HI and U.S. territories.

(5) *Foreign citizens may only participate through an eligible US entity as:*

a. An employee of such entity

b. A full-time student of such entity, if the entity is a university or other accredited institution of higher learning,

c. An owner of such entity, so long as foreign citizens own less than 50% of the interests in the entity, OR

d. A contractor under written contract to such entity.

For additional information regarding foreign citizen participation see *https://www.co2conversionchallenge.org/.*

The full details for eligibility requirements can be found on the official challenge site: *https://www.co2 conversionchallenge.org/.*

III. Intellectual Property

Each application will be required to disclose the anticipated ownership, use, and licensing of any intellectual property. The team will be required to represent and warrant that the entry is an original work created solely by the team, that the team owns all intellectual property in and to the entry, and that no other party has any right, title, claim or interest in the entry, except as expressly identified by the team to NASA in writing in the application and at the conclusion of the competition. NASA claims no right, title, or interest to any such intellectual property solely as a consequence of the team's participation in the competition, including the winning of a prize. NASA reserves the right to share any submissions or related information received with its civil servants and contractors, and reserves the right to approach individual participants about any future opportunities at the conclusion of the competition.

IV. Rules

The complete rules for the CO_2 Conversion Challenge can be found at: *https://www.co2conversion challenge.org/.*

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–20483 Filed 9–20–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities will hold fourteen

meetings of the Humanities Panel, a federal advisory committee, during October 2019. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center, 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: October 10, 2019

This meeting will discuss applications on the topic of Literature, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

2. Date: October 17, 2019

This meeting will discuss applications on the topic of Art History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

3. Date: October 21, 2019

This meeting will discuss applications on the topic of History, for Media Projects: Development Grants, submitted to the Division of Public Programs.

4. Date: October 22, 2019

This meeting will discuss applications on the topic of History, for Media Projects: Production Grants, submitted to the Division of Public Programs.

5. Date: October 22, 2019

This meeting will discuss applications on the topic of Media Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

6. Date: October 24, 2019

This meeting will discuss applications on the topics of Architecture and Urban Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

7. Date: October 24, 2019

This meeting will discuss applications on the topics of Native American and Western U.S. History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

8. Date: October 25, 2019

This meeting will discuss applications on the topic of World Studies: Ancient to Early Modern, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

9. Date: October 25, 2019

This meeting will discuss applications on the topic of History, for Media Projects: Development Grants, submitted to the Division of Public Programs.

10. Date: October 28, 2019

This meeting will discuss applications on the topic of Cultural History, for Media Projects: Production Grants, submitted to the Division of Public Programs.

11. Date: October 29, 2019

This meeting will discuss applications on the topics of American Studies and Visual Culture, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

12. Date: October 30, 2019

This meeting will discuss applications for the Short Documentaries grant program, submitted to the Division of Public Programs.

13. Date: October 31, 2019

This meeting will discuss applications on the topic of U.S. History: Social, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

14. Date: October 31, 2019

This meeting will discuss applications on the topics of Historic Places and U.S. History, for the Public Humanities Projects: Historic Places (Implementation) grant program, submitted to the Division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: September 17, 2019.

Elizabeth Voyatzis,

Committee Management Officer, National Endowment for the Humanities.

[FR Doc. 2019–20460 Filed 9–20–19; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Week of September 23, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 23, 2019—Tentative

Thursday, September 26, 2019

2:00 p.m. Affirmation Session (Public Meeting) (Tentative)

Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), Petition for Interlocutory Review of LBP–18–5, Memorandum and Order (Denying Motions for Summary Disposition as to Contention 1A) (Tentative)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at

240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 19th day of September 2019.

For the Nuclear Regulatory Commission.

Jeffrey A. Whited,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–20713 Filed 9–19–19; 4:15 pm]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before November 22, 2019.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer, and emailed to *pcfr@peacecorps.gov.*

Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

General Description of Collection: The Peace Corps uses the Medical Documentation Request Form to collect essential information from medical providers and staff to facilitate access of accommodations as required by Section 504 of the Rehabilitation Act. Data collected will be used to validate accommodation needs. These forms are the first documented point of contact between the Peace Corps and its applicants or employees who are in need of accommodations.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Medical Documentation Request Form.

OMB Control Number: 0420–****.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 1000.

b. *Frequency of response:* 1 time.

c. *Completion time:* 10 minutes.

d. *Annual burden hours:* 200 hours.

This notice is issued in Washington, DC, on June 18, 2019.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2019–18996 Filed 9–20–19; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–200 and CP2019–223; MC2019–201 and CP2019–224]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 25, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–200 and CP2019–223; *Filing Title:* USPS Request

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

to Add Priority Mail Contract 551 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 25, 2019.

2. *Docket No(s).:* MC2019–201 and CP2019–224; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 25, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–20485 Filed 9–20–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 17, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 66 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–201, CP2019–224.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–20467 Filed 9–20–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 17, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 551 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–200, CP2019–223.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–20471 Filed 9–20–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86994; File No. SR–CBOE–2019–058]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding Cabinet Trading Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

September 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Exchange's Rules regarding cabinet trading and move those Rules from the currently effective Rulebook (''current Rulebook'') to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook'').

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). Cboe Options intends to migrate its trading platform to the same

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

In anticipation of migration, the Exchange proposes to update and amend current Rule 6.54 which governs transactions in connection with ''cabinet'' trades, which are trades in listed options on the Exchange that are worthless or not actively traded. In anticipation of migration, the Exchange proposes to move current Rule 6.54 (and subsequently delete the current rule after the shell Rulebook takes effect on October 7, 2019) to proposed Rule 5.12, which will govern cabinet trading in substantially the same manner as the current rule, with only slight differences. The proposed rule change does not propose to implement new or unique functionality that has not been previously filed with the Commission, found to be consistent with the Act, or is not available on other exchanges. The proposed rule change largely makes changes to remove obsolete provisions, update rule provisions to align with the manner in which the Exchange's System, functionality and other rules will function upon migration. The Exchange also proposes to make non-substantive changes to simplify, clarify, and generally update its cabinet trading provisions by consolidating them into a single rule, simplifying the rule language, updating the rule text to read in plain English, reformatting the paragraph lettering and/or numbering, and updating cross-references to rules that will be in the shell Rulebook and implemented upon migration. The Exchange believes that the proposed changes, overall, will make the rules easier to follow and understand, thus, simplifying the regulatory requirements and increasing the transparency and understanding of the Exchange's rules and operations for Trading Permit Holders (''TPHs'').

Current Rule 6.54 provides that cabinet trades may only occur via open outcry, even if the class trades on the Exchange's System. As all classes currently trade on the Exchange's System, proposed Rule 5.12 merely updates the current language to state that all cabinet orders will execute in open outcry pursuant to Rule 5.85(a) (in the shell Rulebook). Proposed Rule 5.12 also consolidates provisions in connection with cabinet trades by moving the FLEX cabinet trading limitation under current Rule 24A.15 [5] to the proposed rule. The proposed changes do not substantively alter the manner in which cabinet orders may trade currently, but merely updates the rule language to reflect that cabinet orders will execute in open outcry like all other orders execute in open outcry, in accordance with the order allocation, priority, and execution rules that will be implemented upon migration, which is substantially similar to how cabinet trades currently function. The Exchange notes that upon migration, Users must systematize and route any orders they wish to execute in open outcry to the Exchange's Public Automated Routing System (''PAR'') prior to representation on the Exchange's trading floor for execution in open outcry.[6]

Current Rule 6.54.01 states that a PAR Official may accept bids or offers for opening transactions at a price of $1 per contract only to the extent that the cabinet book (which no longer exists) [7] already contains closing orders for the contra side. The Exchange notes that a previous rule filing, SR–CBOE–2018–010,[8] inadvertently removed what was then paragraph (a) under Rule 6.54, which included a provision allowing Floor Brokers and Market-Makers to represent that bids and offers for cabinet trades after first yielding priority to all orders in the cabinet book. Specifically, when this provision was initially added to the Exchange Rules, its purpose was to make clear that Floor Brokers or Market-Makers may enter into both opening and closing cabinet transactions, so long as they first yield priority to all orders in the Order Book Official's cabinet book.[9] Previous paragraph (a) had generally described cabinet trading for classes not trading on the Hybrid System, and, because SR–CBOE–2018–010 had been implemented to delete Exchange Rules that no longer applied to the Exchange, it deleted previous paragraph (a) as all options traded on the Hybrid System, and currently do. This deletion inadvertently occurred because certain language in previous paragraph (a) is still relevant to transacting on the Exchange. Orders in all classes on the Hybrid System can currently be automatically executed both electronically and in open outcry after routing to PAR (as cabinet orders must). Even as the Order Book Officials and cabinet book ceased to exist on the Exchange,[10] functionality continued to allow market participants to enter into both opening and closing cabinet transactions so long as they first yielded to closing orders on the floor. Therefore, proposed Rule 5.12 makes explicit that market participants may continue to place closing cabinet orders, and may continue to place opening cabinet orders, which must continue to yield to all closing cabinet orders represented by the trading crowd. In addition to making this explicit in the Exchange Rules, the Exchange believes that it is in line with the primary purpose of cabinet trades by facilitating the close of positions in a worthless or inactive series.

In addition to this, proposed Rule 5.12(a) provides that cabinet orders are priced at $0.01. The current rule provides that cabinet trades are those priced at $1.00, which accounts for the notional value of series actually priced at $0.01 but adjusted with a multiplier of 100. Instead, under the proposed rule, $0.01 is designed to encompass those series price at $0.01 with a 100 multiplier, as well as series that are priced at $0.01 or less with a different multiplier. Additionally, the proposed rule provides that cabinet orders are not available in classes with a minimum increment of $0.01. This is substantially similar to the function of the current rule, which does not allow penny pilot classes as cabinet orders, but accounts for the fact that the rules may permit other penny classes in addition to penny pilot classes. The proposed rule change appropriately renames such orders as ''penny cabinets''.

Proposed Rule 5.12(b) provides for sub-penny cabinet orders.[11] Proposed Rule 5.12(b) is based on the rules of other options exchanges, previously approved by the Commission.[12] The Exchange believes that allowing a price of at least $0 but less than $0.01 better accommodates the closing of options positions in series that are worthless or

[5] The Exchange notes that it is deleting the entirety of current Rule 24A.15 and will discuss the split price component of the rule in a FLEX-related rule filing for migration.

[6] A PAR workstation is an Exchange-provided order management tool for use on the Exchange's trading floor by Trading Permit Holders and PAR Officials to manually handle orders pursuant to the Rules and facilitate open outcry trading.

[7] *See* Securities Exchange Act Release No. 82646 (February 7, 2018), 83 FR 6294 (February 13, 2018) (SR–CBOE–2018–010), which removed the cabinet book and Order Book Officials because these functions were generally obsolete because most trading occurred electronically, as it does today. However, Cabinet Book Officials were replaced by PAR Officials, who currently do hold cabinet orders for priority execution on the Exchange.

[8] *See id.*

[9] *See* Securities Exchange Act Release No. 55081 (January 10, 2007), 72 FR 2317 (January 18, 2007) (SR–CBOE–2007–02).

[10] *See supra* note 7.

[11] Current Rule 6.54.02 contains rule language in connection with sub-cabinets which expired on March 5, 2018.

[12] *See, e.g.,* NYSE Arca Options Commentary .01 to Rule 6.80–O; *and* NASDAQ Phlx Options 8, Sec. 33(d).

not actively traded, particularly due to market conditions which may result in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series (with a 100 multiplier) with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $0.01 cabinet price (*e.g.,* the series might be quoted no bid). Proposed Rule 5.12(b) also provides that bids and offers for opening transactions in sub-penny cabinets are only permitted to accommodate closing transactions, which is consistent with the cabinet trading rules of other exchanges, as well as the purpose of cabinet trades in facilitating closing transactions for open positions in worthless or inactive series. The Exchange also notes that proposed Rule 5.12 does not maintain current language regarding the reporting of cabinet transactions (as stated in current Rule 6.54.01) or adopt such language in connection with sub-penny cabinets, which is contained in other exchanges' sub-cabinet rules, because all cabinet orders will execute in open outcry just like other orders (instead of only through a PAR Official or on the cabinet book), therefore cabinet order transaction prices will be also be reported like all other transactions, which, pursuant to current Rule 6.51 (Rule 6.1 in the shell Rulebook), must be reported within 90 seconds of the execution, which the Exchange then immediately submits to the Options Clearing Corporation (''OCC''). The Exchange represents that there would be no operational issues in processing and clearing sub-penny cabinet trades.[13] The Exchange does not believe that the OCC will have any operational issues with processing sub-penny cabinet trades, as they will be reported to and submitted by the Exchange like all other transactions currently executed in open outcry. Additionally, the Exchange notes that because sub-penny cabinets will be reported and processed like all other open outcry trades market participants will not be impacted nor have to take on any additional reporting or processing burden.[14]

The Exchange also notes that the proposed rule change deletes current Rules 21.15, and 28.12 which governed cabinet trading in connection with government securities options and corporate debt security options, respectively, but are redundant of the current manner in which cabinet trades are executed and of the proposed rule, which allow opening transactions to execute so long as they first yield to closing transactions. The proposed rule change also removes Rule 23.10 because it refers to provisions that no longer exist within the Exchange Rules and it moves Rule 23.10.01 to proposed Rule 5.12(b), and makes non-substantive changes to the language to reflect the rest of the proposed sub-penny cabinet rule language.

The proposed rule change also renames the rule ''Cabinet Trades'', and updates references according. The Exchange believes that the term ''cabinet trade'' is a wider-used and recognized term throughout the industry. Also, the Exchange notes that ''accommodation liquidations'' refers specifically to cabinet trades to close out positions in worthless or nearly worthless out-of-the-money option contracts, whereas cabinet trades more accurately refer to the wider range of transactions governed by the proposed rule, which are trades in options listed on the Exchange that are worthless or not actively traded.

In light of the proposed change, the Exchange also proposes to add ''penny cabinet'' orders and ''sub-penny cabinet'' orders to the list of types of order instructions under Rule 5.6(c) currently in the shell Rulebook. Likewise, the Exchange proposes to add penny cabinet and sub-penny cabinet orders to the list of order available for PAR routing to open outcry under Rule 5.83(a)(2) currently in the shell Rulebook. The proposed changes are not substantive changes but instead are intended to provide additional clarity under the rules regarding cabinet order instructions and that cabinet orders may route through PAR to execute in open outcry, which will be available to Users upon the technology migration.

The Exchange also proposes to delete Rule 5.7.03 in the shell Rulebook (and renumber the subsequent provisions), which excludes accommodation liquidations from the entry of orders and quotes into the System and the systemization of orders. As stated above, upon migration Users must systematize and route any orders, including cabinet orders, they wish to execute in open outcry to PAR prior to representation on the Exchange's trading floor for execution in open outcry. Additionally, the Exchange now proposes to delete Rule 6.24 from the current Rulebook as it inadvertently failed to delete this rule under SR–CBOE–2019–033,[15] which moved the provisions under current Rule 6.24 to Rule 5.7 in the shell Rulebook in anticipation of migration.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule is generally intended to provide consolidated and updated rules for market participants in connection with the October 7, 2019 technology migration. The proposed rule change does not propose to implement new or unique functionality that has not been previously filed with the Commission, found to be consistent with the Act, or is not available on other exchanges. The Exchange notes that the proposed rule is substantially the same as the current rule and largely makes changes to remove obsolete provisions, update rule provisions to align with the manner in which the Exchange's System, functionality and other rules that will become live upon migration, as well as non-substantive changes to simplify rule language, make the rule provisions plain English, and update cross-references and paragraph formatting. The Exchange believes that the proposed changes, overall, will

[13] *See also* note 7. The Exchange also notes that there were no issues in processing and clearing such transactions prior to the expiration of the sub-cabinet rule.

[14] *See also* note 7. The Exchange notes that market participants did not raise any concerns with the processing of sub-cabinet trades prior to the expiration of the sub-cabinet rule.

[15] *See* Securities Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to System Connectivity and Order Entry and Allocation Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges) (SR–CBOE–2019–033).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

make the rules easier to follow and understand, thus, simplifying the regulatory requirements and increasing the transparency and understanding of the Exchange's operations for TPHs. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities, would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, contribute to the protection of investors and the public interest.

Specifically, the proposed change amending rule language to provide that all cabinet orders will execute in open outcry pursuant to Rule 5.82(c)(2) does not substantively alter the manner in which cabinet orders may trade currently, but merely updates the rule language to reflect the order allocation and priority rules that will be applicable to the execution of all orders in open outcry upon migration. The Exchange believes that by amending its rule to accurately reflect Exchange functionality and processes upon migration, the proposed rule change removes impediments to and perfects the mechanism of a free and open national market system.

Additionally, the Exchange believes that the proposed rule change makes it explicit that market participants may enter cabinet orders as either opening or closing transactions, but such orders must yield priority to all cabinet orders represented by the trading crowd. The Exchange notes that this is the manner in which the cabinet order process currently functions, yet such rule text pertaining to this process was inadvertently removed. Therefore, by making this process explicit in the Exchange Rules, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system. The proposed rule change does not alter the manner in which functionality currently exists for cabinet trading but merely intends to make the rules clear that market participants may continue to place cabinet orders as both opening and closing transactions that will execute in accordance with the allocation and priority rules like that of all other orders executed in open outcry, after first yielding to the cabinet orders on the floor. Similarly, the proposed rule does not maintain the cabinet reporting provisions because all cabinet orders will execute in open outcry just as any other order and, therefore, cabinet order transaction prices will also be reported just like any other transaction. The Exchange believes that the proposed changes will remove impediments to and perfect the mechanism of a free and open market and national market system, and otherwise protect investors and the public interest, because they will accurately reflect Exchange functionality upon migration.

The proposed rule change to update cabinet orders as orders priced $0.01, does not alter the current application of the rule. Rather, the proposed change is intended to add additional detail to the rule, thereby removing impediments to and perfecting the mechanism of a free and open national market system, by stating the actual options price which would include both those series priced at $0.01 with a 100 multiplier adjustment, as well as series that are priced at $0.01 or less with a different multiplier. Likewise, the proposed rule is intended to account for the fact that the rules permit other penny classes than just penny pilot classes, thus, does not allow cabinet orders for any class with a minimum increment of $0.01. Therefore, the proposed change facilitates transactions in securities by ensuring that the rule covers cabinet trade in all series, not only those with a 100 multiplier, and ensures that the cabinet order rule accounts for other Exchange Rules that provide for penny classes.

The Exchange believes that the proposed sub-penny cabinet orders will remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, protect investors because such orders will allow market participants to close options positions in series that are worthless or not actively traded, particularly due to market conditions which may result in a significant number of series being out-of-the-money. The proposed change does not offer new or unique functionality for market participants as it is consistent with sub-cabinet rules on other options exchanges that have been found to be consistent with the Act and previously approved by the Commission,[19] as well as the purpose of cabinet orders in facilitating closing transactions for open positions in worthless or inactive series. The Exchange also believes that the proposed change will protect investors because there would be no operational issues in processing and clearing sub-penny cabinet trades because cabinet trades will be reported to the Exchange and submitted by the Exchange to OCC just like all open outcry transactions are currently reported and submitted.[20] Also, because sub-penny cabinets will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden.

The Exchange also notes that the proposed rule change that deletes current which governed cabinet trading in connection with government security, interest rate, and corporate debt security options will remove impediments to and perfect the mechanism of a free and open market and national market system by removing redundant and/or obsolete rules and, as a result, providing transparent, updated rules for market participants. Likewise, renaming the rule ''Cabinet Trades'', also adds clarity and updates the rules by reflecting an industry-wide term and the wider range of transactions govern by the proposed rule.

The Exchange believes that the non-substantive changes to list cabinet trades under types of order instructions and to add penny cabinet and sub-penny cabinet orders to the list of order available for PAR routing to open outcry under Exchange Rules currently in the shell Rulebook, as well as updating the exclusion of cabinet trades from provisions in relation to systemization (as cabinet orders will route through PAR to execute in open outcry) are designed to provide additional clarity and transparency under the rules in connection with cabinet orders and functionality related to cabinet orders available to Users upon the technology migration. The Exchange notes that the deletion of Rule 6.24 from the current Rulebook is a non-substantive change as this rule was inadvertently maintained in the Rulebook under SR–CBOE–2019–033 which moved the provisions under current Rule 6.24 to Rule 5.7 in the shell Rulebook in anticipation of migration, yet inadvertently failed to delete the current rule in anticipation of migration, as well.

The proposed rule change makes other various non-substantive changes throughout the rules that will protect investors and benefit market participants as these changes simplify the rules and use plain English throughout the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[19] *See supra* note 12. *See also* note 11. The Exchange also notes that sub-cabinet functionality was available to market participants until the expiration of Rule 6.54.02 on March 5, 2018.

[20] *See also* note 7. The Exchange also notes that there were no issues in processing and clearing such transactions prior to the expiration of the sub-cabinet rule.

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of a technology migration of the Cboe Affiliated Exchanges. As stated, the proposed changes to the rules that reflect functionality that will be in place come October 7, 2019 provide clear rules that accurately reflect post-migration functionality upon the completion of migration.

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition because the proposed cabinet orders will be available to all market participants to execute in open outcry in the same manner as they are able to execute their other orders. The Exchange notes that while cabinet orders must yield to closing cabinet orders on the floor first, this will not impact intramarket competition because it is the manner in which cabinet orders already trade and is in line with the primary purpose of cabinet trading to facilitate closing transactions in worthless or inactive series. The Exchange also does not believe that the proposed rule change will impose any burden on intermarket competition. As discussed above, the basis for the proposed rule change regarding sub-penny cabinets are the rules of other options exchanges, which have already been found consistent with the Act and approved by the Commission.[21] In addition to this, these exchanges have substantially similar rules regarding cabinet trading.[22]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[23] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2019–058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–058 and should be submitted on or before October 15, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20477 Filed 9–20–19; 8:45 am]

BILLING CODE 8011–01–P

[21] *See supra* note 12.

[22] *See id.*

[23] The Exchange has fulfilled this requirement.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, September 25, 2019 at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov*.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose amendments to Rule 15c2–11 under the Securities Exchange Act of 1934 that governs the publication of quotations for securities in a quotation medium other than a national securities exchange, and issue proposed guidance on the Rule and a concept release requesting public comment on information repositories.

2. The Commission will consider whether to adopt a new rule and related

amendments under the Securities Act of 1933 that permits issuers to engage in oral or written communications with certain institutional investors, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering.

3. The Commission will consider whether to adopt a new rule under the Investment Company Act of 1940 that will permit exchange-traded funds that satisfy certain conditions to operate without first obtaining an exemptive order, as well as related form amendments and the rescission of certain exemptive relief to ETFs and their sponsors. The Commission will also consider whether to issue a related order granting exemptive relief from certain provisions of the Securities Exchange Act of 1934 and the rules thereunder.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: September 18, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–20609 Filed 9–19–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86996; File No. SR–CboeBZX–2019–067]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Innovator-100 Buffer ETF Series, Innovator Russell 2000 Buffer ETF Series, Innovator-100 Power Buffer ETF Series, Innovator Russell 2000 Power Buffer ETF Series, Innovator-100 Ultra Buffer ETF Series, and Innovator Russell 2000 Ultra Buffer ETF Series

September 17, 2019.

On July 18, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the Innovator-100 Buffer ETF Series and Innovator Russell 2000 Buffer ETF Series, Innovator-100 Power Buffer ETF Series and Innovator Russell 2000 Power Buffer ETF Series, and Innovator-100 Ultra Buffer ETF Series and Innovator Russell 2000 Ultra Buffer ETF Series under BZX Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on August 5, 2019.[3] On August 29, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 19, 2019.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates November 3, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2019–067), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20480 Filed 9–20–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86511 (July 30, 2019), 84 FR 38078.

[4] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2019-067/srcboebzx2019067-6101764-192027.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86997; File No. SR–NASDAQ–2019–071]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a)

September 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Sections 118(a)(1), (2) and (3) to add a new credit under each of these rules for non-displayed orders (other than Supplemental Orders) that provide liquidity.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Sections 118(a)(1), (2) and (3) to add a new credit under each of these rules for non-displayed orders (other than Supplemental Orders) that provide liquidity. Equity 7, Section 118(a) provides the fees assessed and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades. The Exchange is proposing to adopt a credit of $0.0010 per share executed applicable to Nasdaq-listed securities (''Tape C'') under paragraph (a)(1) of the rule, and credits of $0.0015 per share executed applicable to securities listed on NYSE (''Tape A'') and securities listed on exchanges other than Nasdaq and NYSE (''Tape B'') under paragraphs (a)(2) and (a)(3) of the rule, respectively. To qualify for each of these credits a member must provide 0.10% or more of Consolidated Volume [3] through non-displayed orders (other than midpoint orders), and provide 0.15% or more of Consolidated Volume through midpoint orders during the month. The proposed credits are provided to qualifying members for non-displayed orders not otherwise covered by the lists of credits provided for non-displayed orders (other than Supplemental Orders) that provide liquidity under each of the respective paragraphs of Equity 7, Section 118(a).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits and charges is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[8]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[9] Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Generally, the Exchange's proposed schedule of credits and charges Equity 7, Section 118(a) provide increased overall incentives to members to increase their liquidity provision activity on the Exchange, and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity provision activity on the Exchange will, in turn, improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants. The proposed new credits are consistent with the current design of Equity 7, Section 118(a) because it provides incrementally increased incentives in return for increased liquidity provision in non-displayed orders. Moreover, the proposed credits will be comparable to, if not favorable to, those that its competitors provide.[10]

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed credits fairly among its market participants. The proposal will provide a member with an opportunity to earn a higher credit for its non-displayed orders above the current credits provided to members that provide 0.03% or more of Consolidated Volume during the month through midpoint orders or other non-displayed orders, which are $0.0005 per share executed for Tape C securities and $0.0010 per share executed for Tape A and B securities. Like these current credits, the proposed credits for Tape A and B securities are higher than the proposed credits for Tape C securities. This is reflective of the Exchange's

[3] The term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Equity 7, Section 118(a).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] CBOE BZX provides a rebate of $0.0015 per share executed for non-displayed orders that add liquidity in the securities of any tape. *See* Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[9] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that such shifts in liquidity and market share occur within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[10] *See* n. 8, *supra.*

desire to increase market share in Tape A and B securities, which is lower in comparison to market share in Tape C securities.

Moreover, it is equitable for the Exchange to increase its overall credits to participants whose orders provide liquidity to the Exchange as a means of incentivizing increased liquidity provision activity and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity provision activity on the Exchange will improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net providers of liquidity will benefit most from the proposed credits, this result is fair insofar as increased liquidity provision activity will help to improve market quality and the attractiveness of the Exchange's equity market to all existing and prospective participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from an increase in the provision of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to receive the higher credits. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed new credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange only has approximately 18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of July 2019.

In sum, the Exchange intends for the proposed credits to increase member incentives to provide liquidity in non-displayed Orders to the Exchange, which is reflective of fierce competition for order flow noted above; however, if the proposed credits are unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even lose market share as a result. Accordingly, the Exchange does not believe that the proposed new credits will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2019–071 on the subject line.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–071 and should be submitted on or before October 15, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20474 Filed 9–20–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86995; File No. SR–CboeBZX–2019–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust

September 17, 2019.

On January 30, 2019, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade SolidX Bitcoin Shares issued by the VanEck SolidX Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on February 20, 2019.[3]

On March 29, 2019, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 20, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On August 12, 2019, the Commission further extended the period for consideration of the proposed rule change to October 18, 2019.[8]

On September 13, 2019, BZX withdrew the proposed rule change (SR–CboeBZX–2019–004).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85119 (Feb. 13, 2019), 84 FR 5140 (Feb. 20, 2019).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85475 (Mar. 29, 2019), 84 FR 13345 (Apr. 4, 2019). The Commission designated May 21, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 85896 (May 20, 2019), 84 FR 24188 (May 24, 2019).

[8] *See* Securities Exchange Act Release No. 86630 (Aug. 12, 2019), 84 FR 42035 (Aug. 16, 2019).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20475 Filed 9–20–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10900]

Notice of Determinations: Culturally Significant Objects Imported for Exhibition—Determinations: ''James Tissot: Fashion and Faith'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''James Tissot: Fashion and Faith,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, Legion of Honor Museum, San Francisco, California, from on or about October 12, 2019, until on or about February 9, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–20512 Filed 9–20–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10898]

Determination Pursuant to Section 7041(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141) (the ''Act''), I hereby determine that it is important to the National Security interest of the United States to waive the certification requirement under section 7041(a)(3)(A) of the Act. I hereby waive that requirement.

This determination shall be published in the **Federal Register** and shall be reported to Congress, along with the accompanying Memorandum of Justification.

Dated: August 8, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20513 Filed 9–20–19; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice: 10899]

Determination Pursuant to Section 451 of the Foreign Assistance Act for the Use of Funds To Support Burundi and Mauritania

Pursuant to section 451 of the Foreign Assistance Act of 1961 (the ''Act'') (22.U.S.C. 2261), section 1–100(a)(1) of Executive Order 12163, and Delegation of Authority 245–2, I hereby authorize, notwithstanding any other provision of law, the use of up to $25,000,000 made available to carry out provisions of the Act (other than the provisions of chapter 1 of part I of the Act) to provide assistance authorized by part I of the Act to support Burundi's participation in the African Union Mission in Somalia (AMISOM) and counterterrorism capacity building programs for Mauritania.

This Determination and the accompanying Memorandum of Justification shall be promptly reported to the Congress. This Determination shall be published in the **Federal Register**.

Dated: September 6, 2019.

John J. Sullivan,

Deputy Secretary of State .

[FR Doc. 2019–20519 Filed 9–20–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2019–57]

Petition for Exemption; Summary of Petition Received; Key Lime Air Corporation.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 15, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0588 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Miles Anderson (202) 267–6425, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 13, 2019.

James M. Crotty,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0588

Petitioner: Key Lime Air Corporation (KLA)

Section(s) of 14 CFR Affected: § 119.49(a)(4)

Description of Relief Sought: Key Lime Air requests an exemption from 14 CFR 119.49(a)(4) to the extent necessary to conduct domestic and supplemental operations using DO–328–300 series airplanes which are not listed on Table 1 (FAR 121 Aircraft) of Operating Specifications D085. More specifically, the requirement that the carrier ''must obtain operations specifications containing . . . [the] type of aircraft, registration markings, and serial numbers of each aircraft authorized for use . . .''

[FR Doc. 2019–20546 Filed 9–20–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), Department of Transportation, Utah Department of Transportation (UDOT).

ACTION: Notice of limitations on claims for judicial review of actions by UDOT and other Federal agencies.

SUMMARY: The FHWA, on behalf of UDOT, is issuing this notice to announce actions taken by UDOT that are final Federal agency actions. The final agency actions relate to a proposed highway project, improvements to Washington Parkway, from North Green Springs Drive to Interstate 15 (I–15) in Washington City, Washington County, State of Utah. Those actions grant

licenses, permits and/or approvals for the project.

DATES: By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 20, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Eric Hansen, Region 4 Environmental Manager, UDOT Region 4; 210 West 800 South; Richfield, Utah 84701; (435) 772–6628; email: *erichansen@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: Effective July 1, 2008 and renewed on July 1, 2011, June 30, 2014, and June 23, 2017, FHWA assigned, and UDOT assumed, certain responsibilities of FHWA for environmental review, consultation, and other actions required by applicable Federal environmental laws and regulations for highway projects in Utah, pursuant to 23 U.S.C. 326. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 326 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the Washington Parkway; Green Springs Dr. to I–15 project in the State of Utah.

The project proposes to extend Washington Parkway from North Green Springs Drive to I–15, Exit 13 to improve transportation mobility and provide an alternate collector route from I–15 to the Green Springs community in Washington City. The new proposed roadway pavement will be approximately 2.75 miles long with two travel lanes and shoulders for an approximate width of 32 feet. These improvements were identified in the Categorical Exclusion prepared for the project by UDOT. The project is included in UDOT's adopted 2019–2024 State Transportation Improvement Plan (STIP) as project number F–R499(326) and is scheduled for construction to begin in fiscal year 2019, being let as a design-bid-build contract. The project is also included in the Dixie Metropolitan Planning Organization's adopted *2015–2040 Regional Transportation Plan (RTP)—Amendment #2 (March 2018).*

The actions by UDOT, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project (Washington Parkway; Green Springs Dr. to I–15 in Washington County, Utah, Project No. F–R499(326)) approved on August 26, 2019 and other documents in the UDOT project records. The CE and other project records are available for review by contacting UDOT at the address provided above. This notice applies to the CE, the NHPA Section 106 review, the Section 4(f) determination, the Endangered Species Act determination, the Noise Assessment, and all other UDOT and federal agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Map-21, the Moving Ahead for Progress in the 21st Century Act [Pub. L. 112–141].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Water:* Section 404 of the Clean Water Act, 33 U.S.C. 1344; E.O. 11990, Protection of Wetlands; Section 402 of the Clean Water Act, 33 U.S.C. 1342.

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

7. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 ; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

8. *Noise:* Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713].

9. *Executive Orders:* E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (*l*)(1).

Issued on: September 16, 2019.

Brigitte Mandel,

Assistant Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2019–20545 Filed 9–20–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–22–P]

Notice of Intent for an FHWA EIS Project; Environmental Impact Statement: Cherokee County, Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Federal notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the publishing authority, FHWA, on behalf of TxDOT, is issuing this notice to advise the public that an EIS will be prepared for a proposed transportation project to construct a US 69 relief route around the City of Jacksonville in Cherokee County, Texas.

FOR FURTHER INFORMATION CONTACT: Carson Hollis, P.E., Advanced Project Development, TxDOT Tyler District, 2709 West Front Street, Tyler, Texas, 75702, telephone: 903–510–9157, email: *Carson.Hollis@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other NOIactions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

TxDOT will prepare an EIS for a proposed US 69 Relief Route around the west side of the city of Jacksonville, TX. There is no existing facility; therefore, the project is proposed on new location. The proposed project is anticipated to be between 10–13 miles long depending on the alignment selected, beginning at existing US 69 just south of Loop 456

and terminating at existing US 69 north of Jacksonville.

The EIS will evaluate a range of build alternatives and a no-build alterative. Possible build alternatives include up to four alignments currently under development based on the 1000-foot recommended corridors identified in the 2018 US 69 Jacksonville Relief Route Study Feasibility Study. These alternatives generally consider alignments along the center, west, and east limits of the corridor with variations at interchanges, but may extend outside the corridor for a portion of the alignment to avoid key environmental features. The northernmost corridor connects with existing US 69 approximately 1.3 miles north of CR 3908, travels on the west side of Jacksonville, and reconnects with existing US 69 at the existing TX 456 Loop. The southernmost corridor connects with existing US 69 at CR 3908 and joins the previously described corridor north of US 175.

TxDOT will issue a single Final Environmental Impact Statement and Record of Decision document pursuant to 23 U.S.C. 139(n)(2), unless TxDOT determines statutory criteria or practicability considerations preclude issuance of a combined document. In accordance with 23 U.S.C. 139, cooperating agencies, participating agencies, and the public will be given an opportunity for continued input on project development. A public scoping meeting is planned for November 2019 in Jacksonville, TX. An agency scoping meeting will also be held with participating and cooperating agencies. The agency and public scoping meetings will provide an opportunity for the participating/cooperating agencies and public to review and comment on the draft coordination plan and schedule, the project purpose and need, the range of alternatives, and methodologies and level of detail for analyzing alternatives. In addition to the agency and public scoping meetings, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Issued on: September 9, 2019.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2019–19947 Filed 9–20–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2018–0004; Notice No. 2018–04]

Hazardous Materials: Public Meeting Notice for the Research and Development Roundtable

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice is to inform the interested public that the Office of Hazardous Materials Safety (OHMS) of the Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a public Research and Development (R&D) Roundtable on October 24, 2019, in Washington, DC OHMS will host the meeting to provide an overview of its next Broad Agency Announcement (BAA) which will help the agency meet its goals of promoting safety and fostering innovation. The meeting will provide an overview of OHMS' R&D program; internal and external processes behind the BAA; limits of the BAA; and the results of the 2017 BAA. All participants will have an equal chance to provide input for future consideration.

DATES: The meeting will be held on October 24, 2019, from 8:30 a.m. to 2:30 p.m. Eastern Standard Time. Requests to attend the meeting must be received by October 22, 2019. Requests for accommodations for a disability must be received by October 21, 2019.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation Conference Center at 1200 New Jersey Avenue SE, Washington, DC 20590. The DOT requests that attendees pre-register for this meeting by completing the form at *https://www.surveymonkey.com/r/BJMMQYM.* Conference call-in capability will be provided. Specific information about conference call-in meeting access will be posted, when available, at: *https://www.phmsa.dot.gov/research-and-development/hazmat/rd-meetings-and-events* under ''Upcoming Events.''

FOR FURTHER INFORMATION CONTACT: Eva Rodezno or Rick Boyle, Office of Hazardous Materials Safety, Research and Development, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC. Telephone: (202) 366–8799 and (202) 366–2993. Email: *eva.rodezno@dot.gov* or *rick.boyle@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHMS' mission is to protect people and the environment from the risks posed by hazardous materials (hazmat) transportation. To this end, OHMS is particularly interested in research gaps associated with:

- Development of New Standards for Bulk and Non-Bulk Packaging
- Improved Materials and Designs for Hazardous Materials Packaging
- Self (Default) Classification of Hazardous Materials and/or Articles
- Improvements to the North American Emergency Response Guidebook
- Charge Storage Device Transportation Safety
- Innovative Technologies to Improve Hazmat Transportation Safety

The meeting will be hosted and facilitated by PHMSA. Meeting participants will include modal authorities and external research partners including other DOT modal partners. OHMS R&D efforts include laboratory testing, analysis, modeling, product and material development, and field testing.

II. Agenda

The meeting agenda will cover the following topics:

- Safety Briefing and Overview
- Welcome and Administrative Remarks
- Research Gaps: Safety
- Research Gaps: Innovation
- Closing Remarks

III. Public Participation

The meeting will be open to the public on a first come, first served basis, as space is limited. Members of the public who wish to attend in person must RSVP by filling out the form listed in the **ADDRESSES** section. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on September 18, 2019, under authority delegated in 49 CFR 1.97.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–20547 Filed 9–20–19; 8:45 am]

BILLING CODE 4909–60–P

FEDERAL REGISTER

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Part II

Department of Education

34 CFR Parts 668, 682, and 685

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

RIN 1840–AD26

[Docket ID ED–2018–OPE–0027]

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: Final rule.

SUMMARY: The Department of Education (Department or We) establishes new Institutional Accountability regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to revise a Federal standard and a process for adjudicating borrower defenses to repayment claims for Federal student loans first disbursed on or after July 1, 2020, and provide for actions the Secretary may take to collect from schools the amount of financial loss due to successful borrower defense to repayment loan discharges. The Department also amends regulations regarding pre-dispute arbitration agreements or class action waivers as a condition of enrollment, and requires institutions to include information regarding the school's internal dispute resolution and arbitration processes as part of in the borrower's entrance counseling. We amend the Student Assistance General Provisions regulations to establish the conditions or events that have or may have an adverse, material effect on an institution's financial condition and which warrant financial protection for the Department, update the definitions of terms used to calculate an institution's composite score to conform with changes in certain accounting standards, and account for leases and long-term debt. Finally, we amend the loan discharge provisions in the Direct Loan Program.

DATES: These regulations are effective July 1, 2020. The incorporation by reference of certain publications listed in these regulations is approved by the Director of the Federal Register as of July 1, 2020. Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information related to borrower defenses to repayment, pre-dispute arbitration agreements, internal dispute processes, and guaranty agency fees, Barbara Hoblitzell at (202) 453–7583 or by email at: *Barbara.Hoblitzell@ed.gov.* For further information related to false certification loan discharge and closed school loan discharge, Brian Smith at (202) 453–7440 or by email at: *Brian.Smith@ed.gov.* For further information regarding financial responsibility and institutional accountability, John Kolotos (202) 453–7646 or by email at: *John.Kolotos@ed.gov.* For information regarding recalculation of subsidized usage periods and interest accrual, Ian Foss at (202) 377–3681 or by email at: *Ian.Foss@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

Section 455(h) of the Higher Education Act of 1965, as amended (HEA), authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. The regulations at 34 CFR 685.206(c) governing defenses to repayment were first put in place in 1995. Those 1995 regulations specified that a borrower may assert as a defense to repayment ''any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law,'' (the State law standard) but were silent on the process to assert a claim.

In May 2015, a large nationwide school operator, filed for bankruptcy. The following month, the Department appointed a Special Master to create and oversee a process to provide debt relief for the borrowers associated with those schools, who had applied for student loan discharges on the basis of the Department's authority to discharge student loans under 34 CFR 685.206(c).

As a result of difficulties in application, interpretation of the State law standard, and the lack of a process for the assertion of a borrower defense claim in the regulations, the Department began rulemaking on the topic of borrower defenses to repayment. On November 1, 2016, the Department published final regulations [1] (hereinafter, ''2016 final regulations'') on the topic of borrower defenses to repayment, which significantly expanded the rules regarding how borrower defense claims could be originated and how they would be adjudicated. The 2016 final regulations were developed after the completion of a negotiated rulemaking process and after receiving and considering public comments on a notice of proposed rulemaking. In accordance with the HEA, the 2016 final regulations were scheduled to go into effect on July 1, 2017.

On May 24, 2017, the California Association of Private Postsecondary Schools (CAPPS) filed a Complaint and Prayer for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia (Court), challenging the 2016 final regulations in their entirety, and in particular those provisions of the regulations pertaining to: (1) The standard and process used by the Department to adjudicate borrower defense claims; (2) financial responsibility standards; (3) requirements that proprietary institutions provide warnings about their students' loan repayment rates; and (4) the provisions requiring that institutions refrain from using arbitration or class action waivers in their agreements with students.[2]

In light of the pending litigation, on June 16, 2017, the Department published a notification of the delay of the effective date [3] of certain provisions of the 2016 final regulations under section 705 of the Administrative Procedure Act [4] (APA), until the legal challenge was resolved (705 Notice). Subsequently, on October 24, 2017, the Department issued an interim final rule (IFR) delaying the effective date of those provisions of the final regulations to July 1, 2018,[5] and a notice of proposed rulemaking to further delay the effective date to July 1, 2019.[6] On February 14, 2018, the Department published a final rule delaying the regulations' effective date until July 1, 2019 (Final Delay Rule).[7]

Following issuance of the 705 Notice, the plaintiffs in *Bauer* filed a complaint challenging the validity of the 705 Notice.[8] The attorneys general of eighteen States and the District of Columbia also filed a complaint challenging the validity of the 705

[1] 81 FR 75926.

[2] Complaint and Prayer for Declaratory and Injunctive Relief, *California Association of Private Postsecondary Schools* v. *DeVos,* No. 17–cv–00999 (D.D.C. May 24, 2017).

[3] 82 FR 27621.

[4] 5 U.S.C. 705.

[5] 82 FR 49114.

[6] 82 FR 49155.

[7] 83 FR 6458.

[8] Complaint for Declaratory and Injunctive Relief, *Bauer* v. *DeVos,* No. 17–cv–1330 (D.D.C. Jul. 6, 2017).

Notice.[9] Plaintiffs in both cases subsequently amended their complaints to include the IFR and the Final Delay Rule, and these cases were consolidated by the Court.

In November 2017, the Department began a negotiated rulemaking process. The resultant notice of proposed rulemaking was published on July 31, 2018 (2018 NPRM).[10] The 2018 NPRM used the pre-2016 regulations, which were in effect at the time the NPRM was published, as the basis for proposed regulatory amendments.

The 2018 NPRM also expressly proposed to rescind the specific regulatory revisions or additions included in the 2016 final regulations, which were not yet effective. Accordingly, the preamble of the 2018 NPRM generally provided comparisons between the regulations as they existed before the 2016 final regulations, the 2016 final regulations, and the proposed rule. The Department received over 30,000 comments in response to the 2018 NPRM. Many commenters compared the Department's proposed regulations to the 2016 final regulations, when the 2016 final regulations differed from a proposed regulatory change in the 2018 NPRM. The Department also provided a Regulatory Impact Analysis that was based on the President's FY 2018 budget request to Congress, which assumed the implementation of the 2016 final regulations.

On September 12, 2018, the Court issued a Memorandum Opinion and Order in the consolidated matter, finding the challenge to the IFR was moot, declaring the 705 Notice and the Final Delay Rule invalid, and convening a status conference to consider appropriate remedies.[11]

Subsequently, on September 17, 2018, the Court issued a Memorandum Opinion and Order immediately vacating the Final Delay Rule and vacating the 705 Notice, but suspending its vacatur of the 705 Notice until 5 p.m. on October 12, 2018, to allow for renewal and briefing of CAPPS' motion for a preliminary injunction in *CAPPS* v. *DeVos* and to give the Department an opportunity to remedy the deficiencies with the 705 Notice.[12] The Department decided not to issue a revised 705 notice.

On October 12, 2018, the Court extended the suspension of its vacatur until noon on October 16, 2018.[13] On October 16, 2018, the Court denied CAPPS' motion for a preliminary injunction, ending the suspension of the vacatur.[14]

In the 2018 NPRM, we proposed to rescind provisions of the 2016 final regulations that had not yet gone into effect.[15] However, as detailed in the Department's **Federal Register** notice of March 19, 2019,[16] as a result of the Court's decision in *Bauer,* those regulations have now become effective. This change necessitates technical differences in the structure of this document, which rescinds certain provisions, and amends others, of the 2016 final regulations that have taken effect, compared with that of the 2018 NPRM.

In particular, while the 2018 NPRM technically proposed to amend the pre-2016 regulations (in addition to proposing that the 2016 regulations be rescinded), these final regulations, as a technical matter, amend the 2016 final regulations which have since taken effect. Thus, we describe the changes to the final regulations and show them in the amendatory language at the end of the document based on the currently effective 2016 final regulations. We do this in order to accurately instruct the **Federal Register**'s amendments to the Code of Federal Regulations.

With the 2016 final regulations in effect, the Department initially considered publishing a second NPRM that used those regulations as the starting point, rather than the pre-2016 regulations. However, given that the policies we proposed in the 2018 NPRM were not affected by the set of regulations that served as the underlying baseline, and that we provided a meaningful opportunity for the public to comment on each of the regulatory proposals in the NPRM and on the rescission of the 2016 final regulations, we determined that an additional NPRM would further delay the finality of the rulemaking process for borrowers and schools without adding meaningfully to the public's participation in the process. The Department addressed the provisions in these final regulations in the 2018 NPRM and afforded the public a meaningful opportunity to provide comment. For these reasons, despite the intervening events since publication of the 2018 NPRM, we are proceeding with the publication of these final regulations.

Additionally, after further consideration, we are keeping many of the regulatory changes that were included in the 2016 final regulations. Some of the revisions proposed in the 2018 NPRM are essentially the same as, or similar to, the revisions made by the Department in the 2016 final regulations, which are currently in effect. The Department is not rescinding or further amending the following regulations in title 34 of the Code of Federal Regulations, even to the extent we proposed changes to those regulations in the 2018 NPRM:

- § 668.94 (Limitation),
- § 682.202(b) (Permissible charges by lenders to borrowers),
- § 682.211(i)(7) (Forbearance),
- § 682.405(b)(4)(ii) (Loan rehabilitation agreement),
- § 682.410(b)(4) and (b)(6)(viii) (Fiscal, administrative, and enforcement requirements), and
- § 685.200 (Borrower eligibility).

The Department also did not propose to rescind in the 2018 NPRM, and is not rescinding here, 34 CFR 685.223, which concerns the severability of any provision of subpart B in part 685 of title 34 of the Code of Federal Regulations; 34 CFR 685.310, which concerns the severability of any provision of subpart C in part 685 of title 34 of the Code of Federal Regulations; or 34 CFR 668.176, which concerns the severability of any provision of subpart L in part 668 of title 34 of the Code of Federal Regulations. If any provision of subparts B or C in part 685, subpart L in part 668, or their application to any person, act, or practice is at some point held invalid by a court, the remainder of the subpart or the application of its provisions to any person, act, or practice is not affected.

While the negotiated rulemaking committee that considered the draft regulations on these topics during 2017–2018 did not reach consensus, these final regulations reflect the results of those negotiations and respond to the public comments received on the regulatory proposals in the 2018 NPRM. The regulations are intended to:

- Provide students with a balanced, meaningful borrower defense to repayment claims process that relies on a single, Federal standard;
- Grant borrower defense to repayment loan discharges that are adjudicated equitably, swiftly, carefully, and fairly;
- Encourage students to directly seek remedies from schools when acts or omissions by the school, including those that do not support a borrower defense to repayment claim, fail to

[9] *Massachusetts* v. *U.S. Dep't of Educ.,* No. 17–cv–01331 (D.D.C. Jul. 6, 2017).

[10] 83 FR 37242.

[11] *Bauer,* No. 17–cv–1330.

[12] *Bauer,* No. 17–cv–1330.

[13] Minute Order (Oct. 12, 2018), *Bauer,* No. 17–cv–1330.

[14] Memorandum Opinion and Order, *CAPPS,* No. 17–cv–0999 (Oct. 16, 2018).

[15] *See:* 83 FR 37250–51.

[16] 84 FR 9964.

provide a student access to the educational or job placement opportunities promised, or otherwise cause harm to students;

• Ensure that schools, rather than taxpayers, bear the burden of billions of dollars in losses from approvals of borrower defense to repayment loan discharges;

• Establish that the Department has a complete record to review in adjudicating claims by allowing schools to respond to borrower defense to repayment claims and provide evidence to support their responses;

• Discourage schools from committing fraud or other acts or omissions that constitute misrepresentation;

• Encourage closing institutions to engage in orderly teach-outs rather than closing precipitously;

• Enable the Department to properly evaluate institutional financial risk in order to protect students and taxpayers;

• Eliminate the inclusion of lawsuits as a trigger for letter of credit requirements until those lawsuits are settled or adjudicated and a monetary value can be accurately assigned to them;

• Provide students with additional time to qualify for a closed school loan discharge and protect students who elect this option at the start of a teach-out, even if the teach-out exceeds the length of the regular lookback period;

• Adjust triggers for Letters of Credit to reflect actual, rather than potential, liabilities; and

• Reduce the strain on the government, and the delay to borrowers in adjudicated valid claims, due to large numbers of borrower defense to repayment applications.

Summary of the Major Provisions of This Regulatory Action: For the Direct Loan Program, the Final Regulations

• Establish a revised Federal standard for borrower defenses to repayment asserted by borrowers with loans first disbursed on or after July 1, 2020;

• Revise the process for the assertion and resolution of borrower defense to repayment claims for loans first disbursed on or after July 1, 2020;

• Provide schools and borrowers with opportunities to provide evidence and arguments when a defense to repayment application has been filed and to provide an opportunity for each side to respond to the other's submissions, so that the Department can review a full record as part of the adjudication process;

• Require a borrower applying for a borrower defense to repayment loan discharge to supply documentation that affirms the financial harm to the borrower is not the result of the borrower's workplace performance, disqualification for a job for reasons unrelated to the education received, or a personal decision to work less than full-time or not at all;

• Revise the time limit for the Secretary to initiate an action to collect from the responsible school the amount of any loans first disbursed on or after July 1, 2020, that are discharged based on a successful borrower defense to repayment claim for which the school is liable;

• Modify the remedial actions the Secretary may take to collect from the responsible school the amount of any loans discharged to include those based on a successful borrower defense to repayment claim for which the school is liable; and

• Expand institutional responsibility and financial liability for losses incurred by the Secretary for the repayment of loan amounts discharged by the Secretary based on a borrower defense to repayment discharge.

The final regulations for the Direct Loan Program also include many of the same or similar provisions as the 2016 regulations, which are currently in effect. For example, both the 2016 regulations and these final regulations:

• Require a preponderance of the evidence standard for borrower defense to repayment claims;

• Provide that a violation by a school of an eligibility or compliance requirement in the HEA or its implementing regulations is not a basis for a borrower defense to repayment unless the violation would otherwise constitute a basis under the respective regulations;

• Allow the same universe of people to file a borrower defense to repayment claim, as the definition of ''borrower'' in the 2016 final regulations is the same as the definition of ''borrower'' in these final regulations;

• Provide a borrower defense to repayment process for both Direct Loans and Direct Consolidation Loans;

• Allow the Secretary to determine the order in which objections will be considered, if a borrower asserts both a borrower defense to repayment and other objections;

• Require the borrower to provide evidence that supports the borrower defense to repayment;

• Automatically grant forbearance on the loan for which a borrower defense to repayment has been asserted, if the borrower is not in default on the loan, unless the borrower declines such forbearance;

• Require the borrower to cooperate with the Secretary in the borrower defense to repayment proceeding; and

• Transfer the borrower's right of recovery against third parties to the Secretary.

The final regulations also revise the Student Assistance General Provisions regulations to:

• Provide that schools that require Federal student loan borrowers to sign pre-dispute arbitration agreements or class action waivers as a condition of enrollment to make a plain language disclosure of those requirements to prospective and enrolled students and place that disclosure on their website where information regarding admission, tuition, and fees is presented; and

• Provide that schools that require Federal student loan borrowers to sign pre-dispute arbitration agreements or class action waivers as a condition of enrollment to include information in the borrower's entrance counseling regarding the school's internal dispute and arbitration processes.

The final regulations also:

• Amend the financial responsibility provisions with regard to the conditions or events that have or may have an adverse material effect on an institution's financial condition, and which warrant financial protection for students and the Department;

• Update composite score calculations to reflect certain recent changes in Financial Accounting Standards Board (FASB) accounting standards;

• Update the definitions of terms used to describe the calculation of the composite score, including leases and long-term debt;

• Revise the Direct Loan program's closed school discharge regulations to extend the time period for a borrower to qualify for a closed school discharge to 180 days;

• Revise the Direct Loan program's closed school loan discharge regulations to specify that if offered a teach-out opportunity, the borrower may select that opportunity or may decline it at the beginning of the teach-out, but if the borrower accepts it, he or she will still qualify for a closed school discharge only if the school fails to meet the material terms of the teach-out plan or agreement approved by the school's accrediting agency and, if applicable, the school's State authorizing agency;

• Affirm that in instances in which a teach-out plan is longer than 180 days, a borrower who declines the teach-out opportunity and does not transfer credits to complete a comparable program, continues to qualify, under the

exceptional circumstances provision, for a closed school loan discharge;

• Modify the conditions under which a Direct Loan borrower may qualify for a false certification discharge by specifying that the borrower will not qualify for a false certification discharge based on not having a high school diploma in cases when the borrower could not reasonably provide the school a high school diploma and has not met the alternative eligibility requirements, but provided a written attestation, under penalty of perjury, to the school that the borrower had a high school diploma; and

• Require institutions to accept responsibility for the repayment of amounts discharged by the Secretary pursuant to the borrower defense to repayment, closed school discharge, false certification discharge, and unpaid refund discharge regulations.

• Prohibit guaranty agencies from charging collection costs to a defaulted borrower who enters into a repayment agreement with the guaranty agency within 60 days of receiving notice of default from the agency.

Timing, Comments and Changes

On July 31, 2018, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register**.[17] The final regulations contain changes from the NPRM, which are fully explained in the *Analysis of Comments and Changes* section of this document.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier with conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the following new regulations at title 34 of the Code of Federal Regulations included in this document for early implementation beginning on September 23, 2019, at the discretion of each institution, as appropriate:

(1) Section 668.172(d).

(2) Appendix A to Subpart L of Part 668.

(3) Appendix B to Subpart L of Part 668.

The Secretary has not designated any of the remaining provisions in these final regulations for early implementation. Therefore, the remaining final regulations included in this document are effective July 1, 2020.

Incorporation by Reference. In § 668.172(d) of these final regulations, we reference the following accounting standard: Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) 2016–02, Leases (Topic 842).

FASB issued ASU 2016–02 to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This standard is available at *www.fasb.org,* registration required.

Public Comment. In response to our invitation in the July 31, 2018, NPRM, more than 38,450 parties submitted comments on the proposed regulations, which included comments also relevant to the 2016 regulations, the implementation of which had been delayed.

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes or recommendations that are out of the scope of this regulatory action or that would require statutory changes in the preamble.

Analysis of Comments and Changes

An analysis of the comments and of any changes in the regulations since publication of the 2018 NPRM follows.

Borrower Defenses—General (§ 685.206)

Comments: Many commenters supported the Department's proposals to improve the borrower defense to repayment regulations. These commenters asserted that the proposed regulations would provide the necessary accountability in the system to prevent fraud, while giving borrowers a path to a more expedient resolution of complaints through arbitration or a school's internal dispute processes.

Some commenters claim that the regulations demonstrate government overreach by creating regulations that would add billions of dollars to Federal spending.

Discussion: We appreciate the comments in support of the proposed borrower defense to repayment regulations.

We disagree with commenters who state that these regulations represent government overreach. Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Section 455(h) of the HEA states: ''Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.''

The Department is not creating a new borrower defense to repayment program but rather is revising the terms under which a borrower may assert a defense to repayment of a loan, for loans first disbursed on or after July 1, 2020, which is the anticipated effective date of these regulations. The Department believes that these regulations strike an appropriate balance between attempting to correct aspects of the 2016 final regulations, that people criticized as Federal Government overreach, and the interests of students, institutions, and the Federal Government.

The Department acknowledges that the 2016 final regulations anticipated that taxpayers would bear a great expense and seeks to cabin that burden through these final regulations. The Department generally seeks to decrease costs to Federal taxpayers and decrease Federal spending through these final regulations. These costs are more fully outlined through the Regulatory Impact Assessment section to follow.

Changes: None.

Comments: One group of commenters supported the regulations for providing a better balance between relief for borrowers and due process for schools by providing both parties with an equal opportunity to provide evidence and arguments and to review and respond to evidence. These commenters acknowledged that balance is essential to a fair process. They expressed concern, however, that the pendulum has shifted too far once again and asserted that in comparison to the 2016 final regulations, the proposed regulations, which elevated the evidentiary standard to clear and convincing, make it too difficult for borrowers to obtain relief.

Other commenters generally opposed the Department's proposed rules concerning the borrower defense to repayment. One commenter suggested that the proposed rules would effectively block relief for the vast majority of borrowers, while shielding institutions from accountability for their misconduct.

[17] 83 FR 37242.

Another group of commenters contended that the NPRM favors predatory institutions over students, doing so based upon unsupported assertions and hypotheticals that ignore and distort data and evidence.

Discussion: We appreciate the commenters' concern that, in attempting to strike a balance, the pendulum may have swung too far, making it more difficult for harmed borrowers to receive relief. Similarly, the Department appreciates the commenters' recognition that the proposed regulations better balance the rights of students and institutions alike. In the sections below, we discuss changes we have made in the final regulations to achieve the balance and fairness commenters from all perspectives encouraged.

For example, and as described below, under the final regulations, borrowers will be required to demonstrate a misrepresentation by a preponderance of the evidence instead of the clear and convincing evidence proposed alternative standard that was included in the 2018 NPRM.

We disagree with commenters who contend that the proposed rules would have blocked relief to borrowers who were victimized by bad actors. Nevertheless, we have revised the rules to provide a fairer and more equitable process for borrowers to seek relief when institutions have committed acts or omissions that constitute a misrepresentation and cause financial harm to students. The Department, in turn, has a process to recover the losses the Department sustains from institutions as a result of granting borrower defense to repayment discharges. This process is outlined in subpart G of Part 668, of Title 34 of the Code of Federal Regulations.

We also disagree with commenters that the proposed rules indicate that the Department sides with institutions over students, and notes that those commenters used unsupported assertions and hypothetical examples to support their comments. We disagree that the proposed regulations would have shielded bad actors from being held accountable for their actions. These final regulations send a clear and unequivocal message that institutions need to be truthful in their communications with prospective and enrolled students.

Throughout this document, as in the 2018 NPRM, we explain the reasons and rationales for these final regulations using data and real-world examples, while drawing upon the Department's experience since the publishing of the 2016 final regulations. The Department remains committed to protecting borrowers and taxpayers from institutions engaging in predatory behavior—regardless of whether those institutions are propriety, non-profit, selective, or open enrollment—which includes misrepresenting an institution's admissions standards and selectivity. The proposed and final regulations also ensure that schools are accountable to taxpayers for losses from the appropriate approval of borrower defense to repayment claims. Borrowers continue to have a meaningful avenue to seek a discharge from the Department, and nothing in these rules burdens a student's ability to access consumer protection remedies at the State level.

Changes: None.

Comments: Several commenters expressed dismay at the Department's 30-day timetable, which the commenters characterized as accelerated, for considering comments and publishing a final rule. These commenters felt that a ''rush to regulate'' had resulted in a public comment period that did not give the public enough time to fully consider the proposals and a timeline that did not afford the Department enough time to develop an effective, cost-efficient rule. Another commenter also asserted that we were following a hastened review schedule and were inappropriately allowing only a 30-day comment period on an NPRM that the commenter asserts was riddled with inaccuracies. The commenter said that, while the APA requires a minimum of 30 days for public comment during rulemaking,[18] a longer period was needed in this instance to allow affected parties to provide meaningful comment and information to the Department. The commenter noted that the Administrative Conference of the United States recommends a 60-day comment period when a rule is economically significant and argued that this recommendation is appropriate in this case due to the vast number of individuals affected by a regulation that modifies the Department's responsibilities for over $1 trillion in outstanding loans.

Discussion: We disagree with the commenters who contend that the Department's timetable for developing borrower defense to repayment regulations did not give the public enough time to fully consider the proposals. The 30-day public comment period provided sufficient time for interested parties to submit comments, particularly given that prior to issuing the proposed regulations, the Department conducted two public hearings and three negotiated rulemaking sessions, where stakeholders and members of the public had an opportunity to weigh in on the issues at hand. The Department also posted the 2018 NPRM on its website several days before publication in the **Federal Register**, providing stakeholders additional time to view the proposed regulations and consider their viewpoints on the NPRM. Further, the Department received over 30,000 comments, many representing large constituencies. The large number of comments received indicates that the public had adequate time to comment on the Department's proposals.

Additionally, the 30-day period referenced in 5 U.S.C. 553(d) refers to the period of time between the publication of a substantive rule and its effective date and not the amount of time necessary for public comment. The applicable case law, interpreting the APA, specifies that comment periods should not be less than 30 days to provide adequate opportunity to comment.

With respect to the comment concerning inaccuracies in the NPRM, we address those concerns in response to comments summarized below.

Changes: None.

Comments: Another group of commenters offered their full support for our efforts to assist students in addressing wrongs perpetrated against them by schools that acted fraudulently or made a misrepresentation with respect to their educational services. The commenters asserted that, when students are defrauded, they need to have the means to remedy the situation. According to these commenters, colleges routinely overpromise and under-deliver for their students and must be held accountable to their students for their failures. These commenters recommended the Department proactively use the many tools already at its disposal to uniformly pursue schools throughout each sector of higher education that are not serving their students well rather than rely on the borrower defense to repayment regulations, which necessarily provide after-the-fact relief for borrowers. The commenters asserted that addressing a problem before it becomes a borrower defense to repayment issue should be the first priority, thus saving current and future students from harm. Another group of commenters offered a similar suggestion and proposed that the Department examine the effectiveness of its gatekeeping obligations under title IV of the HEA as well as the nature of its relationship with accrediting agencies

[18] 5 U.S.C. 553(d).

and States, to prevent participation by bad actors in the title IV programs.

Another group of commenters who generally supported the proposed regulations noted areas of concern or disagreement. They suggested that we amend the regulations to provide a ''material benefit'' to schools that do not have a history of meritorious borrower defense to repayment claims. These commenters also propose that the regulations address the ''moral hazard'' created by giving students an opportunity to receive an education and raise alleged misrepresentations to avoid paying for that education after they complete their education. These commenters would like the Department to mitigate the proliferation of ''scam artists'' and opportunists who advertise their ability to obtain, on behalf of a borrower, ''student loan forgiveness''. They also would like to discourage attorneys from exploiting students through the Department's procedural rules, while harming the higher education sector and the taxpayers in the process.

Discussion: We agree with commenters who suggest that a better approach is to stop misrepresentation before it starts, rather than providing remedies after the student has already incurred debt and expended time and energy in a program that does not deliver what it promised. We also agree the Department should proactively use the many tools already at its disposal such as program reviews and findings from those reviews to pursue schools throughout each sector of higher education that are not serving their students well. The Department devotes significant resources to the oversight of title IV participants and makes every effort to work with accrediting agencies and States to identify problems early, including identifying schools that should be prevented from participating in title IV programs altogether. The Department recognizes accrediting agencies, and only recognized accrediting agencies may accredit institutions so that the institutions may receive Federal student aid.[19] The Department of Education's Program Compliance Office has a School Eligibility Service Group that examines, analyzes, and makes determinations on the initial and renewal eligibility applications submitted by schools for participation in Federal student aid programs.[20] This Office also performs financial analyses, monitors financial condition, and works with state agencies and accrediting agencies.[21] The Office monitors schools and their agents, through on-site and off-site reviews and analysis of various reports, to provide early warnings of program compliance problems so that appropriate actions may be taken.[22]

We do not believe it is necessary or appropriate, nor does the Department possess the legal authority, to provide ''material benefit'' to schools that follow the law and, therefore, do not have a history of meritorious borrower defense to repayment claims. The Department expects that all schools, in every sector, will engage in a forthright and honest manner with their prospective and enrolled students and, therefore, the Department has the discretion to impose certain consequences upon schools who commit certain types of misrepresentations, even if an institution has previously provided accurate information to students.

We agree that a borrower defense to repayment regulation that is poorly constructed, under the statute, may create a ''moral hazard'' by giving students an opportunity to complete their education and raise alleged misrepresentations to avoid paying for that education. These regulations, however, include a process by which the Department receives information from both a borrower and the school. The Department will evaluate whether a borrower defense to repayment claim is meritorious, and the borrower will receive a discharge only if the borrower demonstrates, by a preponderance of the evidence, that the institution made a misrepresentation.

We share the concern of commenters regarding the proliferation of people described by the commenter as ''scam artists'' and opportunists who disingenuously advertise ''student loan forgiveness'' and of some plaintiff's attorneys, and others, who seek to exploit borrowers. The Department, along with the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC), receive and investigate consumer complaints regarding student loan scams. Those investigative functions are unchanged by these regulations. State consumer protection agencies and laws also help borrowers in this regard. Given these additional protections, the Department maintains that these final regulations strike the right balance between consumer protection and due process.

The Department also seeks to prevent borrower defense claims before they arise by disseminating information about various institutions that will help students make informed decisions based upon accurate data. As stated here and throughout the rest of these final regulations, the Department believes that schools and the Federal government each play a role in helping students make informed choices when considering the pursuit of postsecondary education. We are also aware that research has shown that students across the socioeconomic spectrum receive insufficient and impersonal guidance about colleges from their high schools.[23] Evidence also indicates that school selection is critically important to students' postsecondary success, given that students are more likely to persist to completion or degree attainment if they attend a well-matched institution.[24] Similarly, research has shown that a student's choice of major or program may be even more important than his or her choice of institution in determining long-term career and earnings outcomes.[25] The Department has created online tools, like the College Scorecard [26] and College Navigator,[27] that provide objective data across a range of institutional attributes to enable prospective students and their families to weigh their options based upon the characteristics that they deem most important to their decision-making. While we know that millions of users access these tools each year, we have limited evidence on these tools' potential for impact on college-related decisions and outcomes. Moreover, we recognize that some students may be overwhelmed by the process of parsing through the volumes of information on

[19] 20 U.S.C. 1001, *et seq.;* 34 CFR 600.2; 34 CFR 600.20; 34 CFR 668.13.

[20] U.S. Dep't of Educ., Office of Federal Student Aid, Principal Office Functional Statements, *available at https://www2.ed.gov/about/offices/list/om/fs_po/fsa/program.html.*

[21] *Id.*

[22] *Id.*

[23] Alexandria Walton Radford, Top Student, *Top School?: How Social Class Shapes Where Valedictorians Go to College,* University of Chicago Press, (2013).

[24] Audrey Light & Wayne Strayer, *Determinants of College Completion: School Quality or Student Ability?,* 35 J. of Human Res. 299–332 (2000).

[25] See: Holzer, Harry J. and Sandy Baum, *Making College Work: Pathways to Success for Disadvantaged Students* (Washington, DC: Brookings Institution Press, 2017); Carnevale, Anthony, et al., ''Learning While Earning: The New Normal,'' Center on Education and the Workforce, Georgetown University, 2015, *1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/Working-Learners-Report.pdf;* Schneider, Mark, ''Are Graduates from Public Universities Gainfully Employed? Analyzing Student Loan Debt and Gainful Employment,'' *American Enterprise Institute,* 2014, *www.aei.org/publication/are-graduates-from-public-universities-gainfully-employed-analyzing-student-loan-debt-and-gainful-employment/.*

[26] U.S. Dep't of Educ., College Scorecard, *available at https://collegescorecard.ed.gov/.*

[27] U.S. Dep't of Educ., College Navigator, *available at https://nces.ed.gov/collegenavigator/.*

potential postsecondary options and have worked to streamline data sources through the College Scorecard and College Navigator to make it easier for users to focus on the criteria they deem most important. Nonetheless, we believe that, ''armed with detailed, relevant information on financial costs and benefits, students can more fairly evaluate the tradeoffs of attending a certain institution and understand the financial implications of their decisions.'' [28]

The Department has announced its intent to expand the College Scorecard to provide program level outcomes data for all title IV programs, which is the first time such data will be made available to institutions or consumers.[29] We believe that program-level data will be more useful to students than institution-level data. The Department's new MyStudentAid application allows the Department to provide more information to students who are completing their Free Application for Federal Student Aid (FAFSA) form online or interacting with the Department's Federal Student Aid office. Accordingly, we can ensure that more students are presented with useful information about the institutions included on their FAFSA application in a format that is user-friendly and does not require them to conduct an extensive search. Such information will help students become more informed consumers and, thus, be less likely to be deceived by an institution that provides information contradictory to the information that the Department makes available.

Changes: None.

Comments: Many commenters did not support the proposed regulations, asserting that the proposed rule would undermine Congressional intent and shortchange students to benefit corporations with a history of fraud and abuse. These commenters assert that the 2018 NPRM contained errors and logical flaws and was colored throughout by a disturbingly cynical attitude about students, along with a naively charitable view of school owners and investors. They argued that the notion that borrower complaints of fraud result from poor choices in the marketplace and that information will cure the problem has been rejected by research and analysis and is not supported by the structure, text, or legislative history of the HEA. They further assert that the legislative history does not blame students for poor choices and recognizes that schools and the government have a role in helping students avoid poor-value programs. They predicted that the Department's proposed rule would have significant, negative implications for both defrauded borrowers and taxpayers. Another commenter predicted that the effect of proposed regulations would be to depress the percentage of tertiary-trained Americans and increase the rate of borrower bankruptcy filings. This commenter further asserted that the proposed regulations would lower the value of education in the U.S. and cause schools to treat students as economic pawns to be matriculated for profit motives over educational ones.

Some commenters stated that any time limitation should be waived in cases where borrowers could produce new evidence to assert a claim or reopen a decision.

Another commenter asserted that the 2016 final regulations benefit Latino and African American students, who are disproportionately concentrated in for-profit colleges and harmed by predatory conduct. This commenter urged the Department to retain the 2016 final regulations.

Many of the commenters who did not support the proposed changes urged the Department to withdraw the 2018 NPRM and allow for the full implementation of the borrower defense regulations published in 2016.

Discussion: We appreciate the concerns raised by the commenters. Our goal in the NPRM and in these final regulations is to balance the interests of students with those of taxpayers. We need to ensure, for instance, that borrowers receiving relief have claims supported by evidence and to protect the taxpayer dollars that fund the Direct Loan Program. The Department does not agree that the NPRM portrays students or their behaviors in a negative manner or is overly charitable to schools and their investors.

To the contrary, we believe that students have the capacity to make reasoned decisions and that they should be empowered by information and shared accountability expectations. Students are not passive victims; they take an active role in making informed decisions. We describe in our response to comments, throughout this document, how we intend to support students and families in making informed decisions by disseminating information that will help students better evaluate their options.[30]

We disagree with commenters that the proposed regulations do not align with the HEA or Congressional intent. Through section 455(h) of the HEA, 20 U.S.C. 1087e(h), Congress specifically provided the Department with the authority ''to specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under [the Direct Loan Program].'' The proposed regulations, and these final regulations, represent the Department's exercise of this authority, as intended by Congress. We believe that there must be a fair and balanced process for the Department to evaluate whether a borrower, as a result of a school's act or omission, may be relieved of his or her obligation to repay a Federal student loan as contemplated by the statute. We disagree with the commenters that our approach prioritizes schools over students and believe the approach is justified by the Department's obligation to balance the interests of the Federal taxpayers with its responsibility to student borrowers under section 455(h) of the HEA.

We believe we have reached a result in these final regulations that strikes the best possible balance between the different interests at hand. More details on the projected impact of these final regulations are included in the Regulatory Impact Analysis section of this Preamble. Further, we discuss in the sections that follow the changes we have made in the final regulations to achieve the balance and fairness commenters from all perspectives encouraged.

We believe that these final regulations will increase and not lower the value of education in the United States and do not see how these final regulations would depress the number of students attending an institution of higher education. These final regulations establish clear expectations for schools in their dealings with students, and greater certainty provides an economic incentive for schools to flourish and provide better and more diverse opportunities for students. Borrowers are consumers and their choices will impact which schools are most desirable for particular careers and professions.

[28] Exec. Office of the U.S. President, Using Federal Data to Measure and Improve the Performance of U.S. Institutions of Higher Education (rev. Jan. 2017), *available at https://collegescorecard.ed.gov/assets/UsingFederalDataToMeasureAndImprovePerformance.pdf.*

[29] *See* U.S. Dep't of Education, Secretary Devos Delivers on Promise to Expand College Scorecard, Provide Meaningful Information to Students on Education Options and Outcomes, *available at https://www.ed.gov/news/press-releases/secretary-devos-delivers-promise-expand-college-scorecard-provide-meaningful-information-students-education-options-and-outcomes* (May 21, 2019); *See also:* 84 FR 31392, 31408.

[30] *See, e.g.,* U.S. Dep't of Educ., College Scorecard, *available at https://collegescorecard.ed.gov/;* U.S. Dep't of Educ., College Navigator, *available at https://nces.ed.gov/collegenavigator/.*

While the Department cannot regulate the motives of schools, it can, and will, hold schools accountable for their acts and omissions.

Borrowers who are the victims of a misrepresentation by a deceitful institution will be able to obtain relief under these final regulations, after the Department has had the opportunity to weigh information and evidence from all sides, as discussed further below.

The Department asserts that these final regulations will benefit, not harm, all students, including Latino and African American students. These final regulations will provide more information to students regarding their borrower defense claims than the 2016 final regulations and allow students to fully flesh out their claims, as the process in these regulations more clearly provides a school with an opportunity to provide responses and information as to a borrower's borrower defense application, requires that the applicant receives a copy of any response that the school submits, and clearly establishes that the applicant has an opportunity to reply to the school's response.

In contrast, the 2016 final regulations allow a school to submit a response, but did not clearly afford a student the opportunity to reply to the response.[31] Additionally, under the 2016 final regulations, a student has to request that the Department identify the records that the Department considers relevant to the borrower defense to repayment claim, and the Department will only provide the borrower ''any of the identified records upon reasonable request of the borrower.'' [32]

These final regulations, however, guarantee that the student will have a copy of the school's response and all the documents that the Department considers in adjudicating the borrower defense to repayment claim. Accordingly, these final regulations provide a more transparent process and afford due process for all borrowers no matter where they enroll in college and irrespective of race, religion, national origin, gender, or any other status or category.

For the reasons detailed throughout the preamble to these final regulations, we determined that withdrawing the 2018 NPRM and leaving the 2016 final regulations in place was not the best long-term approach. The Department has decided instead to take an approach that applies the 2016 final regulations and these final regulations to applicable time periods. The 2016 final regulations, thus, will apply to loans first disbursed on or after July 1, 2017 and before July 1, 2020, and these final regulations will apply to loans first disbursed on or after July 1, 2020. We describe our changes to each provision of those regulations in detail in the pertinent section of the preamble.

Changes: As explained more fully below, the Department revises the proposed regulations to allow the Secretary to extend the limitations period when a borrower may assert a defense to repayment or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered in two exceptional circumstances (relating to a final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal or a final decision by a duly appointed arbitrator or arbitration panel) as described in 34 CFR 685.206(e)(7). We also add a new paragraph (d) in § 685.206 and language to § 685.222 and Appendix A to subpart B of part 685 to clarify that the 2016 final regulations apply to loans first disbursed on or after July 1, 2017 and before July 1, 2020. These final regulations will apply to loans first disbursed on or after July 1, 2020.

Comments: Some commenters expressed concern and confusion about the structure of the 2018 NPRM, particularly the regulations the Department used as the starting point for the preamble discussion and amendatory language as well as the baseline used for the Regulatory Impact Analysis. They asserted that using the pre-2016 regulations as the basis for the amendatory language raises issues under the APA. They also stated that using the 2019 President's Budget Request as the baseline for the Regulatory Impact Analysis, raises issues under the APA in part because the President's Budget Request assumed the implementation of the 2016 final regulations.

Discussion: We welcome the opportunity to provide additional clarification about the structure of the 2018 NPRM and the reasons for the structure. First, with respect to the amendatory language, the **Federal Register** requires amendatory language to be drafted as amendments to the currently effective text of the Code of Federal Regulations.[33] For that reason, because the effective date of the 2016 final regulations was delayed, our amendatory language in the 2018 NPRM was drafted to reflect changes to the pre-2016 regulatory text. In the preamble, to properly fulfill our obligations under the APA, we discussed our proposed changes as related to both the pre-2016 regulatory text and the 2016 final regulations.

In the Regulatory Impact Analysis (RIA) section of this document, we discuss in detail why we were required to use the President's 2019 Budget Request as the baseline for the RIA in the 2018 NPRM.

Changes: None.

Borrower Defenses—Claims (§ 685.206)

Affirmative and Defensive Claims

Comments: Many commenters, and groups of commenters, advocated for the inclusion in the final regulations of affirmative borrower defense claims, meaning claims asserted before a borrower has defaulted on a Federal student loan. These commenters objected to the proposal that would have limited the Department's consideration of borrower defense claims to those asserted as a defense in collection proceedings. The commenters noted that limiting the consideration of borrower defense claims to defensive claims might encourage some borrowers to default on their loans to become eligible to file a claim.

Commenters representing military personnel and veterans noted that limiting borrower defense claims to defaulted borrowers would fail to recognize the significant risk such a limit would place on service members, veterans, and their dependent family members. The commenters requested clear and reasonable protections from schools with predatory practices and misleading promises. These commenters noted that many jobs held by service members, veterans, spouses, and their adult children require government security clearances. Defaulting on a student loan could result in denial or loss of clearance and, therefore, a loss of employment. In such instances, the commenters asserted that the proposed regulations would increase the likelihood of devastating and, potentially, cascading consequences for military and veteran families.

Some commenters, who supported the inclusion of both affirmative and defensive claims, did so with a caveat that these claims should be combined with a requirement that the claim be supported by clear and convincing evidence, rather than a preponderance of the evidence. One commenter, who supported the inclusion of affirmative claims, did so with a caveat that these

[31] 34 CFR 685.206(e)(3).

[32] *Id.*

[33] *See* 1 CFR part 21. ''Each agency that prepares a document that is subject to codification shall draft it as an amendment to the Code of Federal Regulations . . .'' 1 CFR 21.1.

claims should be supported by evidence that is beyond a reasonable doubt.

One commenter suggested that borrowers whose loan payments are current should be afforded priority over borrowers in default in the adjudication process.

In opposing the proposal to only allow consideration of defensive claims, several commenters rejected the Department's assertion that we did not accept affirmative borrower defense to repayment claims prior to 2015 and alleged that the Department's explanation for proposing that the final regulation only allow for the consideration of defensive claims was insufficient. Another commenter who supported the inclusion of affirmative claims provided evidence that the Department considered borrower defense claims before the borrower was in default prior to 2015.

A number of commenters, however, supported the proposal to consider only defensive claims. One such commenter stated that the regulation was intended to only address claims raised in debt collection actions. Another commenter argued that the proposal to accept both affirmative and defensive claims exceeds the statutory authority conferred upon the Department by the HEA and that any such change can only be addressed by Congressional action. This commenter stated that it shared the concern raised by the Department in the NPRM that allowing consideration of affirmative claims would make it relatively easy for a borrower to apply for relief, even if the borrower had suffered no financial harm, resulting in a significant burden on the Department and institutions to address numerous unjustified claims. This commenter also contended that if the Department allows affirmative claims, borrowers would have nothing to lose by filing for loan relief.

Discussion: In the 2018 NPRM, the Department explained that we were seeking public comment as to whether we should only allow defensive claims, as opposed to both affirmative and defensive claims.[34] The Department stated that it believed that accepting defensive claims, and not affirmative claims, might better balance the competing interests of the Federal taxpayer and of borrowers. The Department sought comment on how it could continue to accept and review affirmative claims, but at the same time discourage borrowers from submitting unjustified claims.

After consideration of the public comments received in response to the NPRM, the Department agrees that it is appropriate to accept both affirmative and defensive claims. The Department understands the concerns raised by the commenters who argued that allowing only defensive claims may provide borrowers with an incentive to default, which, in turn, would have negative consequences for the borrower. In addition, we are concerned about the potential negative impacts on military servicemembers, their families, and borrowers, in general, which could result from increased instances of loan default triggered by borrower efforts to become eligible to assert defensive claims.

The Department acknowledges that the Department did accept affirmative borrower defense in limited circumstances before 2015. However, the Department's interpretation of the existing regulation has been that it was meant to serve primarily as a means for a borrower to assert a defense to repayment during the course of a collection proceeding. After further review of the information submitted by commenters and our own records, the Department acknowledges that throughout the history of the existing borrower defense repayment regulation, the Department has approved a small number of affirmative borrower defense to repayment requests.

The Department's representation of its history of approving borrower defense to repayment loan relief in the NPRM was included as background to our explanations and reasoned bases for two alternative proposals. With these alternatives, we gave the public notice and opportunity to provide feedback on whether the Department should distinguish between affirmative and defensive borrower defense to repayment claims.

As intended by the APA, the Department provided sufficient notice and the public provided comments, and the Department weighed such comments and has decided to allow the consideration of both affirmative claims and defensive claims in these final regulations. However, as explained further in this preamble at Borrower Defenses—Limitations Period for Filing a Borrower Defense Claim, we are establishing a three-year limitations period, that begins to run when the student leaves the school, for all defense to repayment claims under the new standard.

The Department continues to be concerned about the burden to the Department and the taxpayer from a large volume of claims. However, as explained later in this document, the Department does not believe that a different evidentiary standard for affirmative claims versus defensive claims is appropriate. Different evidentiary standards might lead to inconsistency in the Department's adjudication of factually similar borrower defense claims, but for the timing of a borrower's application and loan status. Similarly, the Department does not agree that priority in adjudication should be given to borrowers whose loan payments are current over borrowers whose loans are in default. The Department believes it is appropriate for a borrower to have his or her claim adjudicated based upon the facts underlying his or her application, rather than repayment status. We also believe that the standard we adopt in these final regulations is properly calibrated to allow borrower defense relief only where it is merited, and not to open the door to a large volume of unjustified claims.

The Department disagrees with the commenters who stated that the consideration of affirmative claims is outside of the Department's statutory authority or the purpose of the borrower defense regulations. We stated in the NPRM that the proposal to consider only defensive claims was within the Department's authority under section 455(h) of the HEA.[35] However, by such a statement the Department did not imply that it does not have the authority to consider affirmative claims and, in fact, by proposing that borrowers could submit affirmative claims on loans first disbursed before the effective date of the final regulations, clearly indicated that it does have such authority.

The Department has broad statutory authority to make, promulgate, issue, rescind, and amend regulations governing the manner of, operations of, and governing of the applicable programs administered by the Department and functions of the Department.[36] Further, by providing that the Department may regulate borrowers' assertion of borrower defenses to repayment, section 455(h) of the HEA grants the Department the authority to not only identify borrower causes of action that may be recognized as defenses to repayment, but also to establish the procedures for receipt and adjudication of borrower claims—including the type of proceeding through which the Department may consider such a claim. This regulatory scheme reflects the Department's history in considering borrower defense claims, whether prior to 2015, as pointed out by some commenters, or after 2015.

[34] 83 FR 37253–37254.

[35] 83 FR 37253–37254.

[36] *See* 20 U.S.C. 1221e–3.

Accordingly, the Department does not agree that congressional action is necessary for the Department's consideration of affirmative claims.

Changes: We are adding § 685.206(e) to provide, with regard to loans first disbursed on or after July 1, 2020, that borrowers may submit a defense to repayment claim, both on affirmative and defensive bases, as long as the claim is submitted within three years from the date the borrower is no longer enrolled at the institution.

Application

Comments: Some commenters supported the proposed regulatory provisions which would require the borrower to specify the misrepresentation being asserted for the defense to repayment, certify the claim under penalty of perjury, list how much financial harm was incurred, and acknowledge that if they receive a full discharge of the loan, the school may refuse to provide an official transcript. These commenters believe these requirements will reduce the number of unsubstantiated claims.

One commenter suggested that the application also require borrowers to provide their grade point average (GPA) at the time of their termination or leaving the school and to state, if they failed the academic program, why they failed.

One commenter suggested the Department start a process to consumer test the application, with input from other Federal agencies, to ensure that students of all institutional levels are able to comprehend and complete the application.

Several commenters objected to a proposed requirement that borrowers making a defense to repayment claim provide personal information, including confirmation of the ''borrower's ability to pass a drug test, satisfy criminal history or driving record requirements, and meet any health qualifications.'' The commenters asserted that this would effectively require borrowers to waive their right to privacy and treats the borrower like a criminal, not an injured party. One of these commenters argued that these requirements are irrelevant to the question of school misconduct and are clearly intended to dissuade borrowers from asserting claims of fraud.

Discussion: The Department thanks the commenters who supported the proposed regulations pertaining to the application. We believe the proposed regulation set forth clear borrower defense to repayment application requirements that would allow a borrower to understand and provide the information needed for the Department to accurately evaluate the borrower's claim. As proposed in the NPRM, this application requires the borrower to sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. Such a waiver gives the borrower notice that the school may release information from the borrower's education records to the Department.

We do not agree that it is appropriate to *require* that a borrower, submitting a borrower defense claim, include their GPA or other information regarding their success or failure in any course or program. The Department does not view that information as dispositive as to whether the borrower was harmed by a misrepresentation or an omission by the school. Including this information, however, could have an impact on determining the harm suffered by a student as a result of a misrepresentation. In considering the harm the student suffered as a result of an institution's misrepresentation, the Department must ascertain how much of that harm is the fault of the institution and how much of it is the result of a student's choices, behaviors, aspirations, and motivations.

The Department does not adopt the commenter's suggestion regarding consumer testing the borrower defense application. The Department has significant experience developing and publishing applications similar to the one required in these final regulations and will rely on that experience in creating an appropriate and effective application for this purpose. We disagree with the commenters who objected to the proposed requirement that borrowers supply information relevant to assessing the borrower's allegation of harm as a violation of borrowers' privacy rights. Under the Privacy Act, an agency may ''maintain in its records only such information about an individual as is relevant and necessary to the accomplish a purpose of the agency required to be accomplished by statute . . .''[37] While the information relevant to assessing the borrower's allegation of harm may be private, it is also necessary for the Department to have it in order to carry out its purposes. We will maintain the borrower's privacy, except for the limited purpose of resolving the borrower's claim.

As explained earlier, the HEA provides the Department with the authority to establish regulations on all aspects of the borrower defense to repayment process, including how relief should be provided and determined. It is relevant to the Department's determination of relief to require a borrower to provide a complete picture of the financial harm caused by a school's misrepresentation, by providing information such as: Whether the borrower failed to actively pursue employment if he or she is a recent graduate; whether the borrower was terminated or removed from a job position as a result of job performance issues; or whether the borrower failed to meet other job qualifications for reasons unrelated to the school's misrepresentation.

With respect to the borrower's attempts to pursue employment, the Department revised the final regulations to clarify what the Department expects the borrower to provide as part of the application. The borrower should provide documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower. Examples of this documentation include but are not limited to: Job application confirmation emails; correspondence with potential employers; registration at job fairs; enrolling with a job recruiter; and attendance at a resume workshop. Failure to provide such information could result in a presumption that the borrower failed to actively pursue employment in the field. The Department would like borrowers to have notice of what documentation the Department expects in support of an application for a borrower defense to repayment and what the consequences of failing to provide such documentation will be. The Department must rely on the borrower to supply such information, as the Department will not be aware of any attempts the borrower has made to seek employment. Such documentation will help support the relief that a borrower receives.

While such information about pursuing employment may not be related to whether a school made a misrepresentation, as defined in these final regulations, it does relate directly to whether the borrower was financially harmed by the institution, as required by the standard for a borrower defense claim. Information on intervening causes of a borrower's circumstances that cannot be said to be even related to a borrower's education, much less the misrepresentation at issue, will be relevant to the Department's assessment of the amount of relief to provide to the borrower as a result of the harm that has been caused by the misrepresentation.

With regards to criminal history, we carefully reviewed the public

[37] 5 U.S.C. 552a(e)(1).

comments. We do not adopt the commenters' logic that such a provision would treat borrowers like criminals, require borrowers to waive their right to privacy, or that these questions are ''clearly intended'' to dissuade borrowers from asserting borrower defense claims. However, after our review, the Department decided that the inclusion of the ''criminal record'' language is contrary to the Department's priorities and does not properly support individuals who are attempting to transition out of the criminal justice system through higher education, job training, or other career pathways.

Despite this change, the Department believes that requiring borrowers to provide a complete picture of the financial harm caused by a school's misrepresentation—including whether unrelated factors may have contributed to the borrower's financial circumstances—is appropriate to help the Department satisfy its fiduciary responsibility to taxpayers and to provide just relief for borrowers.

Changes: The Department revised the regulations about the documentation the borrower should provide as part of the borrower defense to repayment application. The borrower still must provide documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower. The Department will presume that the borrower failed to actively pursue such employment, if the borrower fails to provide such documentation. As explained below, the Department also is revising § 685.206(e)(8) to clarify the borrower defense to repayment application will state that the Secretary will grant forbearance while the application is pending and will notify the borrower of the option to decline forbearance. The Department removes ''criminal history or'' from § 685.206(e)(8)(v).

Definition of ''Borrower''

Comments: A group of commenters recommended that the proposed regulatory language in the 2018 NPRM at § 685.206(d)(1)(i), define ''borrower'' to include the student on whose behalf a parent borrowed Federal funds. The purpose of this inclusion is to specifically address whether a parent borrower may raise a defense to repayment claim.

Discussion: The Department regrets the omission of parent borrowers from the borrower defense provisions in the 2018 NPRM. We have amended the definition to reflect the approach taken in the 2016 final regulations, so that a parent borrower may raise a defense to repayment claim based on a misrepresentation or omission made to the parent or to the student on whose behalf the parent borrowed Federal funds. In the final regulations, § 685.206(e)(1)(ii) mirrors § 685.222(a)(4), the definition applicable for loans first disbursed on or after July 1, 2017 and before July 1, 2020, which provides that the term ''borrower'' includes the student who attended the institution, any endorsers, or the student on whose behalf a parent borrowed.

Changes: The definition of ''borrower'' in § 685.206(e)(1)(ii) now includes both the borrower and, in the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

Definition of Direct Loan

Comments: None.

Discussion: The Department would like to clarify that ''Direct Loan'' in § 685.206(e) means a Direct Unsubsidized Loan, a Direct Subsidized Loan, or a Direct PLUS Loan. With respect to both the pre-2016 final regulations and 2016 final regulations, the Department interprets ''Direct Loan'' to mean a Direct Unsubsidized Loan, a Direct Subsidized Loan, or a Direct PLUS Loan in §§ 685.206(c) and (d) and 685.222. These final regulations clarify that ''Direct Loan'' continues to have the same meaning as in the pre-2016 final regulations and 2016 final regulations.

Changes: The Department expressly defines a Direct Loan in § 685.206(e)(1)(i) as a Direct Unsubsidized Loan, a Direct Subsidized Loan, or a Direct PLUS Loan.

Group Claims: Support for Revisions

Comments: Several commenters supported the Department's proposal to eliminate the group claim process for borrower defense claims. They expressed concern that allowing for group claims would incentivize attorneys and advocacy groups to file claims on behalf of a class of students. One commenter asserted that outside actors could attempt to monetize borrower defense claims to their own benefits, especially if the Department were to accept group claims. However, the commenter noted that there are options that the Department could consider to limit this possibility as an alternative to disallowing group claims entirely.

Discussion: The Department thanks the commenters for their support of the regulations that require individuals to assert borrower defense claims. To an extent, we understand the commenters' concerns about, and have already become aware of evidence of, outside actors attempting to personally gain from the bad acts of institutions as well as unfounded allegations. The evidence standard and the fact-based determination of the borrower's harm and resulting reliance requirements in the federal standard in these regulations for loans first disbursed after July 1, 2020, necessitates that each claim be adjudicated separately. While, depending on the circumstances, borrower defense claims brought under those other standards might be amenable to a group process or for expedited processing if there are similar facts and claims among a number of borrowers, the new federal standard envisions a more fact-specific inquiry. As a result, the Department no longer believes that a group process is appropriate.

Changes: None.

Group Claims: Opposition to Revisions

Comments: Many commenters encouraged the Department to include a process in the final regulations for group claims. These commenters noted that students who were at the same school at the same time, who were subject to the same misrepresentation, could expect their claims to be adjudicated more expeditiously, if considered as a group.

Some commenters were not persuaded by the Department's assertion in the 2018 NPRM that a group claim process places an extraordinary burden on both the Department and the Federal taxpayer, given that the 2016 final defense regulations asserted that a group adjudication process with common facts and claims would conserve the Department's administrative resources. These commenters further noted that no undue burden would be placed on the taxpayer so long as the Department is holding institutions financially accountable.

Some commenters suggested that when the Department knows that a school engaged in misrepresentation to a group of students, debt relief should be granted to all of them.

The commenters further recommended that the regulation require the Department to process any relevant and substantiated information in its possession in the same manner as a Freedom of Information Act (FOIA) request and make that information, to the extent permitted by law, available to the borrower and the school.

The commenters suggested that the Department consider significant and plausible allegations of misrepresentation by multiple

borrowers sufficient impetus to launch its own investigation, the outcome of which may be used to substantiate pending borrower defense claims and enable such claims to move to the determination of harm phase. They assert that the Department could use compliance determinations by the Department, or other oversight bodies, as an alternative to a group process that would alleviate some of the burden associated with examining individual claims and focus such reviews on harm to borrowers rather than institutional intent, without curtailing due process rights for schools.

Another commenter noted that allowing for group claims would strengthen the usefulness of the regulation as an accountability measure, as schools would know that efforts to defraud students could result in large groups of students being given relief, with the associated financial impact on the school.

A commenter cited *Federal Trade Commission* v. *BlueHippo Funding, LLC,* 762 F.3d 238 (2nd Cir. 2014) for the proposition that consumer protection agencies need not show that each consumer individually relied on a misrepresentation. Similarly, another commenter stated a limitation on group claims will limit access to relief exclusively to students who have the financial resources to obtain legal representation.

One commenter stated that a ban on group claims places undue burden on individuals who have been defrauded where there is widespread evidence of mistreatment.

Other commenters who supported the inclusion of group claims noted that, while the proposed regulations make explicit that the Department has the authority to automatically discharge loans on behalf of a group of defrauded borrowers, the regulations do not include guidance to ensure that this authority is exercised by the Secretary.

These commenters also advocated including a process in the final regulations that would enable State attorneys general (AGs) to petition the Department to provide automatic group loan discharges to students based on the findings of an AG's investigation. Another commenter also advocated for the rule to permit third parties, such as state AGs or legal aid organizations, to file group claims when they possess evidence of widespread misconduct.

One commenter suggested that group discharges should include borrower defense claimants' private loans and Federal Family Education Loan (FFEL) Program loans.

Discussion: After careful consideration of the comments, the Department retains its position that it is unnecessary to provide a process for group borrower defense claims.

In 2016, the Department decided that a group process would conserve the Department's administrative resources. However, the standard for a borrower defense claim and the process that we are adopting in these final regulations is much different from the standard and process in the 2016 final regulations.

Determinations under these final rules will be highly reliant upon evidence specific to individual borrowers, which requires the Department to reconsider its previous burden calculation. Under these final regulations, a school engaging in misrepresentation alone will not be sufficient for a successful claim. Relief will be granted based upon a borrower's ability to demonstrate that institutions made misrepresentations with knowledge of its false, misleading, or deceptive nature or with reckless disregard and to provide evidence of financial harm. This evidentiary determination and harm analysis require that the Department consider each borrower claim independently and on a case-by-case basis.

The Department declines to accept the commenter's recommendation to process relevant and substantiated information in the same manner as a FOIA request. The purpose of the FOIA process is to allow the release of information for the public. Information submitted for a borrower defense claim is provided to the Department, and it is unclear how the FOIA process could be applicable to the process created by these final regulations. While the Department welcomes information from the borrower and encourages the submission of such information, the process outlined in these final regulations allows for sufficient access to the required information and documentation for the concerned parties to a claim.

While the Department shares and understands the concerns that commenters expressed regarding the expeditious resolution of borrower claims, we believe it is prudent to balance the need for speedy recovery for students against the need to properly resolve each claim on the merits and provide relief in relation to the claimant's harm. To make this determination, it is necessary to have a completed application from each individual borrower, to consider information from both the borrower and the institution, and to examine the facts and circumstances of each borrower's individual situation.

Additionally, the Department does not believe that the elimination of group claims reduces the usefulness of the regulation as an accountability measure. Schools are still subject to the consequences of their misrepresentation and, if necessary, the Secretary retains the discretion to establish facts regarding misrepresentation claims put forward by a group of borrowers.

The Department does not agree that it is too burdensome for a borrower to submit an individual application to provide evidentiary details in order to receive consideration for a full or partial loan discharge or that a borrower must retain legal services in order to file a successful claim. Considering that a student had to sign a Master Promissory Note—a complicated legal document—as well as other documents in order to obtain a student loan, we have determined that the burden upon students to provide documentation and to complete an application is appropriate. In order to properly review the borrower's allegations and calculate the level of relief to which a student is entitled, based on the need to balance the interests of borrowers and taxpayers, the Department must collect information from borrowers through an application form.

Further, presuming reliance on the part of the students would not properly balance the Department's responsibilities to protect students as well as taxpayer dollars.

We appreciate, but do not adopt, the suggestions regarding the Department's consideration of allegations from multiple borrowers as an impetus to launch an investigation (though certainly such allegations could trigger an investigation) and the use of compliance determinations, by the Department or other oversight body, as an alternative to the group process. The Department believes that the most appropriate and fairest method of determining if a student was subject to a misrepresentation, relied on that misrepresentation, and was subsequently harmed by it, is through the individual claim process in these final regulations.

Regarding any evidence from audits, program reviews, or investigations, the Department may, at the Secretary's discretion, determine if it is warranted and more efficient to establish facts regarding claims of misrepresentation put forth by a group.

The Department rejects the commenter's suggestion to include regulatory language to ensure that the authority extended to the Secretary to automatically discharge loans on behalf of a group is exercised. Even if the

Department determines that it is more efficient to establish facts regarding claims of misrepresentation put forth by a group of borrowers, the Secretary will still need to determine that the borrower was harmed as a result of a decision based upon a misrepresentation.

While we reject the suggestion of a process for State AG or legal aid organization petitions, the Secretary may determine that evidence of widespread misconduct, obtained by State AGs or legal aid organizations, merit a broader review of a school's actions in order to establish facts regarding misrepresentation to a group of borrowers. However, the Department has an obligation to taxpayers to independently assess the strength of each borrower defense claim. Consequently, we will not be compelled to take action at the recommendation or petition of a State AG, especially if those allegations have not resulted in a judgment on the merits in an impartial court of law, nor will the Department automatically treat State AG submissions as group claims. Instead, if a State AG has concerns about a particular institution, we would recommend that it work with their State agencies responsible for authorizing and regulating institutions. Those entities are a crucial part of the regulatory triad, which includes the Department, State authorizing agencies, and accreditors, and have the right and responsibility to enforce applicable State laws.

The Department does not have the authority to discharge private student loans or FFEL loans for borrowers who assert borrower defense to repayment claims with respect to their Direct loans. Section 455(h) of the HEA specifically provides that a borrower may assert a borrower defense to repayment to ''a loan made under this part,'' referring to the Direct Loan Program. Private loans are not part of the Direct Loan Program and thus may not be discharged under the Department's borrower defense process by statute. Similarly, FFEL loans are made under the FFEL Program, and not the Direct Loan Program. As a result, a FFEL loan also cannot be discharged through the Direct Loan borrower defense process, unless the FFEL loan has consolidated into a Direct Consolidation Loan under 34 CFR 685.220. In that situation, the FFEL loan would be paid off with the proceeds of the Direct Consolidation Loan, and the borrower's Direct Consolidation Loan—as a loan made under the Direct Loan Program—would allow the borrower to apply for relief through the borrower defense process. Unless consolidated into a Direct Consolidation Loan, as described in 34 CFR 685.200, Private and FFEL loan funds are provided by lenders other than the Department and cannot be discharged through the Direct Loan Program's regulatory or statutory provisions that apply to the Direct Loan Program.

The Department notes that the group process from the 2016 final regulations, at 34 CFR 685.222(f), will still be available for loans first disbursed on or after July 1, 2017, and before July 1, 2020.

Changes: None.

Unsubstantiated Claims

Comments: One commenter stated that the Department's concern regarding the receipt of many frivolous claims is unfounded, wrong-headed, and not supported by research or complaints from dissatisfied consumers. Another commenter noted that in the NPRM, we stated that there was insufficient information to know whether the fear of frivolous claims was legitimate. The commenter also referred to the Department's position in the preamble to the 2016 final regulations, where we held that defense to repayment proceedings will be not be used by borrowers to raise frivolous claims.

Referring to consumer products research, a commenter asserted that the Department's concern regarding frivolous claims ignores good-government practices followed by peer agencies like the Veterans Administration, such as publishing complaints against schools, and does not reflect the overarching goals of the HEA.

A group of commenters objected to the actions taken to mitigate frivolous claims. These commenters expressed a need to balance student protections with expectations of student responsibility, suggesting that the rule must emphasize that students have a right to accurate, complete, and clear information so that they can make sound decisions. The commenters also asserted that students should not be abandoned to the principle of *caveat emptor* and that the higher education community should work with students to avoid bad choices that result in lost time and opportunities.

Another group of commenters expressed concern that those who are ideologically opposed to the existence of privately owned and operated schools may file frivolous claims as a means of harassing schools and harming the schools' reputations, before the claims could be adjudicated by the Department. These commenters encouraged the Department to establish a balanced adjudication process that includes procedural protections that provide for the quick dismissal of frivolous or unsubstantiated claims.

Discussion: The Department agrees with the commenters that the defense to repayment regulations must provide student protections and not endorse a caveat emptor approach, while encouraging fiscal responsibility for students and the Department. As a policy matter, we do not believe that, in practice, the 2016 final regulations will effectively prevent unsubstantiated claims, which is why these final regulations are drafted to build-in further deterrents.

The Department does not possess an official definition of ''frivolous'' or ''unsubstantiated'' claims. In typical usage, however, a frivolous claim is one with little or no weight or not worthy of serious consideration.[38] We use the term, here, to describe claims provided by borrowers that allege misrepresentations that actually did not occur, that seek discharge from private rather than Federal loans, or that seek relief from a school not associated with any of the borrower's current underlying loans.

Although we understand that some commenters may disagree with our approach, the Department's policy seeks to balance the needs of borrowers to have their claims resolved expeditiously against the needs of the Department to resolve claims fairly and efficiently without overburdening the Department, institutions that are operating and serving students, or taxpayers.

The Department has examined the issue of unsubstantiated claims and has concluded that it remains a concern in terms of costs, burden, and delays. Processing unsubstantiated claims would place an administrative burden on the Department. Defending against unsubstantiated claims would be costly to all institutions, particularly smaller institutions. The Department has processed only a small percentage of the claims filed thus far. Of those, around 9,000 applications have been denied as unsubstantiated for reasons that include, but are not limited to, the following: (1) Borrowers who attended the institution, but not during the time

[38] Webster's Dictionary defines frivolous as: ''of little weight or importance; having no sound basis; lacking in seriousness.'' *Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/frivolous?src=search-dict-hed.* Black's Law Dictionary defines ''frivolous'' as when an answer or plea is ''clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff.'' *https://thelawdictionary.org/frivolous/.* The Supreme Court has held that a complaint is frivolous when it lacks ''an arguable basis either in law or in fact.'' *Neitzke* v. *Williams,* 490 U.S. 319 (1989).

period that the institution made the alleged misrepresentation; (2) the borrower submitted the claim without any supporting evidence; and (3) on its face, the claim lacks any legal or factual basis for relief. This high number of unsubstantiated claims, as a practical matter, strains Department resources and delays relief to borrowers who have meritorious claims.

The Department finds that the comment regarding consumer products research and borrower defense claims does not make explicit why such a comparison is an apples-to-apples comparison. It is not apparent from the commenter's argument that, in fact, they are.

The Department believes that by taking seriously its dual responsibilities to students and taxpayers, we are employing good-government practices in accordance with our statutory and regulatory responsibilities.

Contrary to some commenters' suggestions, the Department believes that the regulation appropriately emphasizes disclosure insofar as students, who are themselves taxpayers, have a right to accurate, complete, and clear information that will enable them to make sound decisions.

The Department further believes that requiring borrowers to sign an application claim under penalty of perjury will help deter unsubstantiated claims, as will the opportunity for institutions to respond to such claims, including by providing relevant documents from the student's academic and financial aid records.

The Department reserves the ability to take action against borrowers who perjure themselves in filing a substantially inaccurate claim.

We acknowledge that there is a risk that unsubstantiated claims could be filed in large numbers to target institutions for the purpose of damaging their reputations before the Department can adjudicate the claims as unsubstantiated. Indeed, we are aware of firms and advocacy groups that are engaging in such coordinated efforts against certain institutions.

Nevertheless, by allowing institutions to respond in the adjudication process to all claims—substantiated and unsubstantiated—asserted against them as part of the adjudication process, the Department will be able to mitigate this risk for institutions and make informed decisions on individual claims.

Changes: None.

Retroactive Standards and Bases for Claims

Comments: Several commenters also advocated that borrowers whose loans were disbursed prior to July 1, 2019, should be allowed to initiate both affirmative and defensive borrower defense claims.

These commenters assert that this is especially important when a claim has failed under the current State law standard. The commenters argue that, as a matter of equity, those borrowers should be permitted to refile a claim under the Federal standard.

Discussion: The date of loan disbursement determines which standard applies to the borrower defense claim. For loans first disbursed on or after July 1, 2020, these final regulations include opportunities for borrowers to make both affirmative and defensive claims under a Federal standard within the three-year limitations period.

Likewise, for loans disbursed on or after July 1, 2017 and before July 1, 2020, borrowers may assert both affirmative and defensive claims, but pursuant to the 2016 final regulations. Borrowers of loans first disbursed prior to July 1, 2017, may assert a defense to repayment under the State law standard set forth in 685.206(c). Neither these final regulations nor the 2016 final regulations provide a borrower whose loans were disbursed when the State law standard was in effect the ability to refile a borrower defense claim under a later-effective Federal standard, unless the loans were consolidated after July 1, 2020.

Changes: None.

Borrower Defenses—Federal Standard (Section 685.206)

Comments: Several commenters supported the establishment of a Federal standard for borrower defense to repayment claims, noting that a Federal standard would provide clarity and consistency and enhance Department officials' ability to work with schools to prioritize the delivery of quality education to students.

Several commenters asserted that the proposed Federal standard makes it substantially more difficult for defrauded borrowers to assert a claim. The commenters argue that by eliminating the State law standard, and excluding final judgments made by Federal or State courts against a school from the list of acceptable defenses, the Department effectively nullifies State consumer protection laws and requires a borrower who successfully sues their school for fraud in a State court to continue repaying loans used to attend the school while the school continues to reap the benefit of the borrower's Federal student aid.

Several commenters suggested that the Department establish the Federal standard as a floor and allow borrowers who choose to do so to assert claims based on a State standard.

Other commenters asserted that any Federal standard should not limit the rights a borrower has in his or her own State. The commenters opined that States should have the right to protect their own consumers and ensure the quality of schools licensed to operate in their States. Several other commenters agreed, noting that the proposed standard would destroy the working relationship between the Federal government and States' attorneys general by limiting their role in protecting borrowers.

Another commenter stated that there is no good basis for expanding the reach of the Federal government and supplanting State laws with Federal regulations.

Discussion: We appreciate the support for adopting a Federal standard and agree that a Federal standard provides consistency.

Section 455(h) of the HEA expressly states: ''*Notwithstanding any other provision of State or Federal law,* the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan.'' (Emphasis added). Congress did not require the Secretary to use State law as the basis for asserting a defense to repayment of a loan. Instead, Congress expressly required the Secretary to specify in regulations which acts or omissions constitute a borrower defense to repayment. Loans under title IV are a Federal asset, which means that the Secretary must maintain the authority to make determinations about when and how a student loan should be discharged.

The Department disagrees now, as it did in promulgating the 2016 final regulations, that moving to a Federal standard interferes with the ability of States to protect students. State authorizing agencies will remain an integral part of the regulatory triad, and State AGs may exercise their separate authority and pursue a legal process to take action against institutions. These final regulations do not nullify, abrogate, or derogate the authority of States to enforce their own consumer protection laws. A borrower defense to repayment application filed with the Department is only one of several available avenues for potential relief to borrowers, and borrowers may choose the best avenue of relief available to them.

These final regulations continue to allow borrowers to submit the factual findings supporting a final judgment in a State AG enforcement action against their schools as evidence to support their borrower defense to repayment claims. However, the Department notes that, as a practical matter, factual findings in state AG enforcement actions often are of limited utility to borrower defense claims because State consumer protection laws cover broader issues than Department-backed student loans or even the provision of educational services. Accordingly, a judgment against an institution in an action brought by a State AG to enforce State law may not be relevant to a title IV defense to repayment claim. Therefore, the Department's final regulations expressly state that certain categories of State law claims which are enumerated in 34 CFR 685.206(e)(5)(ii)—including but not limited to, claims for personal injury, sexual harassment, civil rights violations, slander or defamation, property damage, or challenging general education quality or the reasonableness of an educator's conduct in providing educational services—are not directly and clearly related to the making of a loan or the provision of educational services by a school. For example, the reasonableness of an educator's conduct in providing educational services, such as the educator's teaching style, preparation for class, etc., is irrelevant to whether the educator made a misrepresentation as defined in these final regulations. When a borrower points to a final judgment in a State law action in support of an application for borrower defense to repayment, the Department must consider the final judgment's relevance to the borrower defense claim.

A Federal standard assures borrowers equitable treatment under the law regardless of where they live or where their institutions are located. In considering claims under the 1995 borrower defense regulations, the Department found it unwieldy to navigate the consumer protection laws of 50 different States. Researching and applying the consumer protection laws of the 50 States requires significant resources and, thus, delays the adjudication of borrower defense to repayment claims. Further, applying disparate State law could result in differential and inequitable treatment of similarly situated borrowers. For instance, two borrowers who were exposed to identical misrepresentations and suffered the same hardship could have their borrower defense claims resolved inconsistently simply because the borrowers reside in different States.

We do not agree that it would be beneficial to allow borrowers to select the State standard under which their claims would be reviewed. Most borrowers would lack the expertise and information to make such a choice-of-law determination. Moreover, this approach undercuts our objective to adjudicate claims swiftly and equitably.

Separately, we do not believe that the Department should share with State AGs sensitive academic and financial information for borrowers who seek individual loan discharges through borrower defense to repayment claims, the work of State AGs may inform and advance the Department's efforts to ensure accountability at the institution level because of the important role State AGs play in enforcing consumer protection laws. That being said, title IV Federal student loans are Federal assets, backed by Federal tax dollars and governed by federal law. As a result, the Department must work independently to fulfill its fiduciary responsibilities to the American taxpayer.

There is nothing in our final regulations that preempts State consumer protection laws or diminishes the State role in consumer protection. As explained above, States play a vital role in enforcing consumer protection laws that hold institutions accountable outside the realm of Federal student loans.

Changes: The Department adopts, with changes for organization and consistency, the Federal standard as articulated in Alternative B for § 685.206(e).

Alignment With Definition of Misrepresentation

Comments: None.

Discussion: The Department seeks to better align the Federal standard for borrower defense claims with the definition of misrepresentation. The 2018 NPRM proposed different alternatives,[39] not all of which expressly incorporated the definition of misrepresentation. The Department adopts language that expressly incorporates the definition of misrepresentation in 685.206(e)(3). The Department also expressly includes a reference to the provision of educational services, which appears in the definition of misrepresentation, in the Federal standard. The Department sought to streamline the Federal standard and definition of misrepresentation and make them parallel to each other.

Changes: The Department is revising the proposed regulations creating a Federal standard for a borrower defense claim to state that the borrower must establish by a preponderance of the evidence that the institution at which the borrower enrolled made a misrepresentation, as defined in 685.206(e)(3), and also expressly to reference the provision of educational services.

Borrower Defenses—Misrepresentation

Definition of Misrepresentation and Intent as Part of the Federal Standard

Comments: Many commenters wrote in support of the proposed definition of misrepresentation, noting that it is clear and focuses on actions that are commonly accepted as dishonest. Some of these commenters noted that the definition would separate inadvertent errors from intentional actions by the school. Other commenters noted that the definition of misrepresentation will help ensure that frivolous claims will be prevented or rightly rejected. Another commenter asserted that the Department should allow for an institution's innocent mistake and that allowing students to discharge their loans for innocent mistakes would create an incredible risk to schools, taxpayers, and ultimately the workforce.

Many other commenters objected to the definition of misrepresentation, arguing that the requirement for intent, knowledge, or reckless disregard was too difficult for borrowers to meet, effectively denying access to relief to most borrowers. These commenters asserted that such evidence would likely be available only if a borrower had legal counsel and access to discovery tools, such as subpoenas for documents and testimony. They also noted that misrepresentations need not be intentional to harm students and suggested that negligent misrepresentations be incorporated into the definition as well.

One commenter requested that the Department provide a more fulsome justification for why its view of misrepresentation has changed since the 2016 final regulations. Similarly, another commenter contended that the Department has not provided adequate justification for its view that misrepresentation requires intentional harm to students. One commenter asserted that if the Department can adjudicate allegations of fraud and misrepresentation in an administrative proceeding against a school, then students should be able to benefit from

[39] 83 FR 37325–28.

the same standard for borrower defense to repayment.

Another commenter argued that the proposed Federal standard would be arbitrarily difficult for borrowers to satisfy and seems designed to keep borrowers from receiving relief available to them under the law. This commenter asserted the Department should simplify the process and ensure that borrowers have equitable access to relief.

Some commenters noted that the Department in the 2018 NPRM acknowledged that it is unlikely that a borrower would have evidence to demonstrate that a school acted with intent to deceive, but borrowers are more likely to be able to demonstrate reckless disregard for the truth. The commenter recommends that, as an alternative, the regulation allow borrowers to submit sufficient evidence to prove that a substantial material misrepresentation was responsible for their taking out loans, regardless of whether the misrepresentation was made with knowledge or recklessness by the school.

According to one commenter, the proposed definition of misrepresentation adds a substantial amount of burden without distinguishing among the types of misrepresentations borrowers may have experienced. This commenter noted that the Department itself assumes that only five percent of misrepresentations are committed without intent, knowledge, or reckless disregard; or do not fall under the breach of contract or final judgment components of the standard in the 2016 final regulations. The commenter opined that the Department, through its proposed definition of misrepresentation, was attempting to prevent borrowers who have been harmed by their institutions from accessing relief simply because of asymmetry between borrowers and the school about the nature of the misrepresentation.

One commenter criticized the proposed definition of misrepresentation for exceeding the standards under State and Federal consumer protection laws.

Another commenter asserted that all fifty States have a version of consumer protection laws that prohibit certain unfair and deceptive conduct, commonly known as ''unfair and deceptive trade acts and practices'' (UDAP). According to this commenter, these UDAP laws are modeled after the Federal Trade Commission Act and track the CFPB's statutory authority. This commenter asserts that the UDAP laws address both deception and unfairness and offer a common, stable structure, and pedigree that the Department should adopt. This commenter asserted that a scienter requirement is inconsistent with the state of mind requirements in other Federal laws governing unfair and deceptive practices. The commenter notes that, for example, the deception standard used by the FTC does not require a showing of intent by the party against whom a deception claim is brought. The commenter further notes that the CFPB, uses a similar standard for determining whether an act or practice is deceptive. According to the commenter, under both the FTC and CFPB's standard, a practice is deceptive if, among other things, it is likely to mislead a consumer.

Discussion: We appreciate the commenters' support for the proposed definition of misrepresentation. We agree that it is important to differentiate between acts or omissions that a school made unknowingly or inadvertently and acts or omissions that a school made with knowledge of their false, misleading, or deceptive nature or with reckless disregard for the truth. The Department agrees with negotiators and commenters that it is unlikely that a borrower would have evidence to demonstrate that an institution acted with intent to deceive, and we are revising these final regulations to remove the phrase ''with intent to deceive'' from the Federal standard. It is difficult to prove what an officer's or employee's intent is, but it is not as difficult to prove that a statement was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth. For example, a student may demonstrate that an officer of the institution or employee misrepresented the actual licensure passage rates because the employee's representations are materially different from those included in the institution's marketing materials, website, or other communications made to the student. The officer or employee need not have an intent to deceive the student in making the misrepresentation about actual licensure passage rates. The student may use the institution's marketing materials, website, or other communications to demonstrate that the institution's officer or employee made the representation with knowledge of its false, misleading, or deceptive nature or with reckless disregard for the truth.

To address concerns about the definition of misrepresentation and the Federal standard, the Department is revising the Federal standard to provide greater clarity. The Federal standard proposed in the 2018 NPRM requires borrowers to demonstrate that the institution made a ''misrepresentation of material fact, opinion, intention, or law.'' [40] The Department realizes that it will be difficult to demonstrate a misrepresentation of ''opinion, intention, or law'' and, thus, is removing ''opinion, intention, or law'' from the Federal standard. It could be very difficult to demonstrate a misrepresentation of opinion or intention as opinions and intentions may change and do not constitute facts that may be proved or disproved. Similarly, it would be difficult to demonstrate that the institution made a material misrepresentation of law as laws are subject to different interpretations. Laws that are clearly stated and that are not subject to different interpretations may constitute a material fact. For example, if an institution made a material misrepresentation that these final regulations require a pre-dispute arbitration agreement and class action waiver, then the misrepresentation concerns a material fact. Accordingly, the Federal standard will only require borrowers to demonstrate a misrepresentation of a material fact.

Additionally, the Department is revising the definition of misrepresentation to better align with the Federal standard. The Federal standard in these final regulations requires, in part, a misrepresentation, as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and ''that directly and clearly relates to: (A) [e]nrollment or continuing enrollment at the institution or (B) [t]he provision of educational services for which the loan was made.'' [41] The definition of ''misrepresentation'' proposed in the 2018 NPRM, however, requires the statement, act, or omission of material fact to directly and clearly relate ''to the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan, for enrollment at the school or to the provision of educational services for which the loan was made.'' [42] Requiring the statement, act, or omission to directly and clearly relate to the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan, does not align with the Federal standard, which requires the misrepresentation to directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of

[40] 83 FR 37325.

[41] § 685.206(e)(2).

[42] 83 FR 37326.

educational services for which the loan was made.

Accordingly, the Department is revising the definition of misrepresentation to include a statement, act or omission that clearly and directly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Of course, a misrepresentation about the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan, will qualify as a misrepresentation because such a misrepresentation clearly and directly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made.

The Department, however, does not wish to limit a misrepresentation of material fact to only a statement, act, or omission that directly and clearly relates to the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan. As the examples of misrepresentation in § 685.206(e)(3)(i) through (xi) demonstrate, the misrepresentation of material fact may, for example, directly and clearly relate to the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made.[43] The Federal standard already provides that the borrower must have reasonably relied on the misrepresentation of material fact in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan.

We agree with the commenters who argued that a school should not be held liable if it committed an inadvertent mistake. Schools should work with students when an inadvertent mistake has occurred. As explained below, an inadvertent or innocent mistake should not, and will not, be treated as an act or omission that is false, misleading, or deceptive by an institution. In the preamble to the 2016 final regulations, we took the position that institutions should be responsible for the harm to borrowers as the result of even inadvertent or innocent mistakes. However, as reiterated throughout this document, in these final rules the Department is seeking to empower students by providing them with information and encouraging them to resolve disputes directly with schools in the first instance. Treating innocent mistakes in the same manner as acts or omissions made with knowledge of their false, misleading, or deceptive nature, places well-performing schools at risk unnecessarily, potentially limiting postsecondary opportunities for students or increasing costs. Balancing the Department's dual role to protect Federal tax dollars with its responsibility to borrowers, the Department is incorporating a scienter requirement into borrower defense to repayment claims. Any claim based on misrepresentation will require proof that the institution made the misrepresentation with knowledge that it was false, misleading, or deceptive or that the institution, in making the misrepresentation, acted with reckless disregard for the truth.

The Department does not adopt the commenter's suggestion that the final regulations include a negligence standard. We view our definition of misrepresentation as similar to, but not the same as, the common law definition of fraud or fraudulent misrepresentation, which requires that the institution or a representative of the institution make the misrepresentation with knowledge of its false, misleading, or deceptive nature. Such a standard is different than the failure to exercise care that a negligence standard requires.

Generally, courts find that a defendant committed fraud or a fraudulent misrepresentation when each of the following elements have been successfully satisfied: (1) A representation was made; (2) the representation was made in reference to a material fact; (3) when made, the defendant knew that the representation was false; (4) the misrepresentation was made with the intent that the plaintiff rely on it; (5) the plaintiff reasonably relied on it; and (6) the plaintiff suffered harm as a result of the misrepresentation.[44] These elements, like our final regulations, create a relationship between the false statement, reliance upon the false statement, and a resulting harm.

A plaintiff alleging negligent misrepresentation must show that: (1) The defendant made a false statement or omitted a fact that he had a duty to disclose; (2) it involved a material issue; and (3) the plaintiff reasonably relied upon the false statement or omission to his detriment.[45] In contrast to fraudulent representation, an allegation of negligent misrepresentation need not show that the defendant had knowledge of the falsity of the representation or the *intent to deceive.*[46] In addition, courts have found that, to be actionable, a negligent misrepresentation must be made as to past or existing material facts and that predictions as to future events, or statements as to future actions by a third party, are deemed opinions and not actionable fraud.[47]

We believe that including a negligent misrepresentation standard into our definition would entirely alter the balance we seek to create with these final regulations, as negligent representation may include an inadvertent mistake. The Federal standard in these regulations goes beyond a mere negligence standard in requiring knowledge of the false, misleading, or deceptive nature of the representation, act, or omission and in requiring that the institution make the statement, act, omission with a reckless disregard for the truth. Reckless disregard often is a requirement of intentional torts, which go beyond mere negligence.[48] For example, reckless disregard for the truth in the context of libel means that a publisher must act with a " 'high degree of awareness of probable falsity,' "[49] as "mere proof of failure to investigate, without more, cannot establish reckless disregard for the truth."[50] Similarly, an institution's statement, act, or omission must be made with a high degree of awareness of probable falsity to satisfy the requirement that the institution acted with reckless disregard for the truth.

The Department has now concluded that the 2016 final regulations' inclusion of misrepresentations that "cannot be attributed to institutional intent or knowledge and are the result of

[43] § 685.206(e)(3)(x).

[44] *In re APA Assessment Fee Litigation,* 766 F.3d 39, 55 (D.C. Cir. 2014); *See also: Mid Atlantic Framing, LLC.* v. *Varnish Construction, Inc.,* 117 F.Supp.3d 145, 151 (N.D.N.Y. 2015); *Chow* v. *Aegis Mortgage Corporation,* 185 F.Supp. 914, 917 (N.D.Ill 2002); *Master-Halco, Inc.* v. *Scillia Dowling & Natarelli, LLC,* 739 F.Supp.2d 109, 114 (D.Conn. 2010). Note: In cases involving commercial contracts, courts have often required a further element that the defrauded party's reliance must be reasonable. *Hercules & Co., Ltd.* v. *Shama Restaurant Corp.,* 613 A.2d 916, 923 (D.C. Cir. 1992).

[45] *Sundberg* v. *TTR Realty,* 109 A.3d 1123, 1131 (D.C. 2015); *See also: Indy Lube Investments, LLC* v. *Wal-Mart Stores, Inc.,* 199 F.Supp. 2d 1114, 1122 (D.Kan. 2002); *City of St. Joseph, Mo.* v. *Southwestern Bell Telephone,* 439 F.3d 468, 478 (8th Cir. 2006); *Redmond* v. *State Farm Ins. Co.,* 728 A.2d 1202, 1207 (D.C. 1999).

[46] *Sundberg,* 109 A.3d at 1131.

[47] *Stevens* v. *JPMorgan Chase Bank, N.A.,* 2010 WL 329963 (N.D.Cal. 2010); *See also: Newton* v. *Kenific Group,* 62 F.Supp 3d 439, 443 (D. Md. 2015); *Fabbro* v. *DRX Urgent Care, LLC,* 616 Fed. Appx. 485, 488 (3rd Cir. 2015) (Negligent misrepresentation claims, regarding the expenses involved in starting a franchise, were dismissed, in part, because: "Predictions or promises regarding future events . . . are necessarily approximate.")

[48] *See Harte-Hanks Commc'ns, Inc.* v. *Connaughton,* 491 U.S. 657 (1989); *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 (1974).

[49] *Gertz,* 418 U.S. at 332 (quoting *St. Amant* v. *Thompson,* 390 U.S. 727, 731 (1968)).

[50] *Id.* at 332.

inadvertent or innocent mistakes'' [51] is inappropriate for these final regulations and had the potential to result in vastly increased administrative burden and financial risk to schools and, when the burden proves too great, to the taxpayer. In such a case, a mere mathematical error could lead to devastating consequences to the institution and potentially to its current students, who will bear the cost of forgiving prior students' loans, even though the prior students may have decided to enroll for many reasons unrelated to the error.

We realize that the definition of misrepresentation in these final regulations is a marked departure from the definition of ''substantial misrepresentation'' by the school in accordance with 34 CFR part 668, part F, that was part of the Federal standard in the 2016 final regulations.[52] The 2016 final regulations defined a misrepresentation as: ''Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.'' [53] The 2016 final regulations define a ''substantial misrepresentation'' as ''[a]ny misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.'' [54] In the 2016 final regulations, the Department used the standard of ''substantial misrepresentation,'' which was interpreted to include negligent misrepresentations, to adjudicate both borrower defense to repayment claims and also any fine, limitation, suspension, or termination proceeding against the school to recover any liabilities as a result of the borrower defense to repayment claim.

Unlike these final regulations, the Department's 2016 final regulations did not guarantee that the school would be allowed to respond to a borrower defense to repayment claim. The Department's 2016 final regulations provide that the Department may, but is not required to, consider a response or submission from the school.[55] Under the 2016 final regulations, the Department may adjudicate a borrower defense to repayment claim without any information from the school, grant that claim under the substantial misrepresentation, breach of contract, or judgment standards in the borrower's proceeding, and proceed to initiate a separate proceeding against the school to recover the amount of any relief provided to the borrower.

The Department now believes that using the same standard in two separate proceedings, one for the borrower to receive relief and the other for the Department to recover liabilities from the school, is inefficient and does not provide the robust due process protections that are best for the borrower, school, and the Federal taxpayer. Accordingly, as discussed elsewhere in these final regulations, the Department must provide the school with notice of a borrower defense to repayment claim and a meaningful opportunity to respond to such a claim. The borrower also will be able to file a reply limited in scope to the school's response and any evidence otherwise in the possession of the Department that the Department considers.

The Department believes a Federal standard with a different, more stringent definition of misrepresentation better guards the interests of all students, including an institution's future tuition-paying students, an institution acting in good faith, and the Federal taxpayer who, in some cases, inevitably must pay for any negligent or innocent mistakes. The ''substantial misrepresentation'' standard in the 2016 final regulations behaves like a strict liability standard in torts that is, generally, reserved for abnormally dangerous activities where the activity at issue creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors.[56] Although a ''substantial misrepresentation'' standard is appropriate for proceedings against schools in which the Department seeks to recover liabilities, guard the Federal purse, and protect Federal taxpayers, such a low standard is not appropriate when the Department is forgiving loans and increasing the national debt to the detriment of Federal taxpayers.[57] Student loan debt accounts for $1.5 trillion dollars of the national debt and is ''now the second highest consumer debt category—behind only mortgage debt—and higher than both credit cards and auto loans.'' [58] Each time the Department discharges loans, the Department increases the national debt, especially if the Department is not able to recover the amount of discharged loans in a proceeding against the schools.

We also believe that a less precise definition of misrepresentation would unnecessarily chill productive communication between institutions and prospective and current students. We do not want to create legal risks that dissuade schools from putting helpful and important information in writing or allowing other students and faculty to share their opinions with prospective or current students. It could have a chilling effect on academic freedom and reduce the amount of information provided to students during academic and career counseling. We also believe it would be improper to subject an institution, and its current, past, and future students, to liability and reputational harm for innocent or inadvertent misstatements.

Prospective students benefit when schools share more information, and more information naturally increases the risk that some of the information may be outdated or incorrect in some way. A student is entitled to honest dealing from the school, which means that a school must truthfully communicate when providing information. It does not mean, necessarily, that rapidly changing or purely subjective information must be perfectly free from error.

Schools that provide a high-quality education may make innocent mistakes on highly complex or evolving issues. For example, if a school erroneously represented State licensure eligibility requirements for a particular profession because the school was unaware that the State amended its eligibility requirements just a few days before the

[51] 81 FR 75947.

[52] 34 CFR 685.222(d).

[53] 34 CFR 668.71(c).

[54] *Id.*

[55] 34 CFR 685.222(e)(3).

[56] Restatement (Third) of Torts § 20 (2010).

[57] *See* Federal Reserve, Consumer Credit Outstanding (Levels), *available at https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html.*

[58] Zack Freidman, *Student Loan Debt Statistics in 2019: A $1.5 Trillion Crisis,* Forbes, Feb. 25, 2019, *available at https://www.forbes.com/sites/zackfriedman/2019/02/25/student-loan-debt-statistics-2019/#7577f5f3133f.*

school made the representation, then the school did not act with knowledge that the representation was false. On the other hand, if the school continued to make such an erroneous representation after learning that the State amended the eligibility requirements, then the school acted with knowledge that the representation was false, which constitutes a misrepresentation under these final regulations. The Department recognizes that an institution may self-correct inadvertent misrepresentations through its various compliance programs and encourages institutions to do so.

In determining whether a misrepresentation was made, the Department also may consider the context in which the misrepresentation is made. For example, demanding that the borrower make enrollment or loan-related decisions immediately, placing an unreasonable emphasis on unfavorable consequences of delay, discouraging the borrower from consulting an adviser, failing to respond to borrower's requests for more information about the cost of the program and the nature of any financial aid, or unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication are circumstances that may indicate whether the school had knowledge that its statement was false, misleading, or deceptive or was made with a reckless disregard for the truth. These examples of circumstances that may lead to a borrower's reasonable reliance on a school's misrepresentation standing alone, however, do not suffice to demonstrate that a misrepresentation occurred under these final regulations, just as they did not under the 2016 final regulations.[59]

The Department disagrees that it is too difficult for borrowers to demonstrate that a misrepresentation occurred, as borrowers may easily provide the type of evidence, described in the § 685.206(e)(3)(i) through (xi), to substantiate a misrepresentation. This list of evidence is non-exhaustive, as every type of evidence that could be used to prove a misrepresentation cannot be predicted.

For example, borrowers may provide evidence that actual licensure passage rates, as communicated to them by their admissions counselor, are significantly different from those included in the institution's marketing materials, website, or other communications made to the student. The Department amended the description of evidence that constitutes a misrepresentation to clarify that actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are significantly different from those provided by the institution to national ranking organizations may constitute evidence that a misrepresentation occurred, as borrowers may rely upon misrepresentations made by an institution to a national ranking organization. A borrower also may provide evidence of a representation, such as marketing materials or an institutional ''fact sheet'', regarding the total, set amount of tuition and fees that they would be charged for the program that is significantly different in the amount, method, or timing of payment from the actual tuition and fees charged. Records about the amount, method, or timing of payment should be in the borrower's possession, and the Department has further revised its amendatory language to clarify that a representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student may constitute evidence that a misrepresentation has occurred.

In evaluating borrower defense claims, the Department understands that a borrower may not have saved relevant materials and records to substantiate his or her claim. The Department also may receive additional materials from the institution in its response to a borrower's allegations. The Department may rely on records otherwise in the possession of the Secretary, such as recorded calls, as long as the Department provides both borrowers and institutions with an opportunity to review and respond to such records. The Department encourages borrowers to use the Department's publicly available data as evidence to demonstrate a misrepresentation. The Department will make program-level outcome data available to institutions and students through Federal administrative datasets, and these data tools may help students satisfy this standard in a manner not previously possible. For example, a borrower may use information in the expanded College Scorecard, which will include program-level outcomes data, to demonstrate that an institution, in providing significantly different information than the information in the expanded College Scorecard, committed a misrepresentation with knowledge of its falsity or reckless disregard for the truth.

However, if changing economic conditions result in future students facing markedly diminished job opportunities or earnings, the institution would not have made a misrepresentation unless the data reported for earlier graduates met the definition of misrepresentation.

Another area where an alleged misrepresentation may not actually meet the standard of a misrepresentation is job placement rate reporting. Since at least 2011, the Department had evidence that job placement rate determinations are highly subjective and unreliable.[60] On March 1–2, 2011, RTI International, contractor for the Integrated Postsecondary Education Data System (IPEDS), convened a meeting of the IPEDS Technical Review Panel (TRP) to develop a single, valid, and reliable definition of job placement determined that while calculating job placement rates using a common metric would be preferable, doing so was not possible without further study, given that States and accreditors use many different definitions to define in-field job placements and identify the student measurement cohort for calculating rates. In the absence of a common methodology, the TRP recommended institutions disclose the methodology associated with the job placement rate reported to their accreditor or relevant state agency but advised against posting institutional job placement rates on College Navigator.

For the reasons stated above, the Department encourages accreditors and States to adopt the use of program-level College Scorecard data to ensure that all students have access to earnings data that more accurately and consistently—regardless of accreditor or State—capture program outcomes and resolve the many challenges associated with more traditional job placement rate determinations. This change in practice, alone, will likely reduce the potential for misrepresentations related to job placement rate claims. Such a practice also will enable students to provide evidence of misrepresentation because the institution's representations may easily be compared to College Scorecard data.

As in the 2016 final regulations, these final regulations do not require that a defense to repayment be approved only when evidence demonstrates that a school made a misrepresentation with

[59] 34 CFR 685.222(d)(2)(i) through (v).

[60] Report and Suggestions from IPEDS Technical review Panel #34 Calculating Job Placement Rates, *available at https://edsurveys.rti.org/IPEDS_TRP_DOCS/prod/documents/TRP34_Final_Action.pdf.* The TRP does not report to or advise the Department of Education.

the intent to induce the reliance of the borrower on the misrepresentation.[61] The Department agrees with negotiators and commenters that it is unlikely that a borrower would have evidence—particularly clear and convincing evidence, as proposed in the 2018 NPRM—to demonstrate that an institution acted with intent to deceive. The final regulations provide that a defense to repayment application will be granted when a preponderance of the evidence shows that an institution at which the borrower enrolled made a representation with knowledge that the representation was false, or with reckless disregard for the truth. Accordingly, a borrower is not required to provide evidence that an institution acted with intent to deceive or with intent to induce reliance. The borrower must prove by a preponderance of the evidence that the institution's act or omission was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth.

We recognize that misrepresentations can be made verbally. It can be difficult to determine whether a representative of an institution made a verbal misrepresentation to a borrower several years after the fact. While the Department will consider borrower defense claims in which the only evidence is the claim by the borrower that an institution's representative said something years prior, these necessarily are difficult claims to adjudicate. They also carry an inherent risk of abuse. We thus encourage borrowers to obtain and preserve written documentation of any information—including records of communications, marketing materials, and other writings—that they receive from a school that they rely upon when making decisions about their education. As a general rule, it is best for students to make these important decisions based upon written representations and documentation from the institution.

Like the 2016 final regulations, the Department's proposed misrepresentation standard covers omissions. The Department believes that an omission of information that makes a statement false, misleading, or deceptive can cause injury to borrowers and can serve as the basis for a defense to repayment. For example, providing school-specific information about the employment rate or specific earnings of graduates in a particular field without disclosing employment and earnings statistics compiled for that field by a Federal agency could constitute a misrepresentation under § 685.206(e)(3)(vi). Failing to disclose state or regional data, when available, also could constitute a misrepresentation as reflected by the new example provided in revised § 658.206(c)(3)(vi).[62] These revisions help clarify what the Department may consider an omission with respect to the definition of misrepresentation.

As described in other sections of this Preamble, we have structured these final regulations to provide an equitable process for borrowers and institutions. The borrower and institution may review and respond to each other's submissions. The process created by these final regulations will assist the Department in making fair and accurate decisions, while providing borrowers and schools with due process protections.

The Department believes the definition of ''substantial misrepresentation,'' at § 668.71(c), is insufficient to address the various concerns and interests that commenters describe. As explained above, punishing an institution for an inadvertent mistake does not appropriately balance the Department's obligations to current and future students or taxpayers. The Department, however, will not require a borrower to demonstrate that the institution acted with specific intent to deceive. The borrower must only demonstrate that the institution's act or omission was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth. Additionally, the Department maintains the evidentiary standard of preponderance of the evidence from the 2016 final regulations for borrower defense to repayment applications. This lower evidentiary standard appropriately addresses concerns about the borrower's ability to demonstrate a misrepresentation occurred.

One commenter's assertion that the Department assumes five percent of misrepresentations are not committed with intent, knowledge, or reckless disregard is wrong. In the 2018 NPRM, the Department's Regulatory Impact Analysis provided: ''By itself, the proposed Federal standard is not expected to significantly change the percent of loan volume subject to conduct that might give rise to a borrower defense to repayment claim. The conduct percent is assumed to be 95 percent of the [President's Budget] 2019 baseline level.''[63] The commenter appears to have assumed that the conduct percent is tied to the specific requirement that an act or omission be made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth. As mentioned in the Net Budget Impacts section of the RIA, the distinction between the borrower percent and the conduct percent is somewhat blurred. The change the commenter points out is more reflected in the borrower percent as part of the ability of the borrower to prove elements of their case. Given that the two rates are multiplied in developing the estimates, we believe that the impacts of the regulation are captured appropriately.

The commenter's misunderstanding of the Department's Regulatory Impact Analysis informed the commenter's conclusion that the definition of misrepresentation substantially burdens borrowers without distinguishing among the types of misrepresentations borrowers may have experienced. The commenter does not provide any data to support this conclusion, and the Department's RIA does not establish this conclusion. Contrary to the commenter's assertions, the Department's definition of misrepresentation distinguishes among the different types of misrepresentations borrowers may have experienced. For example, the misrepresentation may be by act or omission. The school may have made the misrepresentation with knowledge of its false, misleading, or deceptive nature or with reckless disregard for the truth.

The Department declines to adopt the UDAP standard suggested by commenters. Both the FTC and CFPB investigate consumer complaints that are not necessarily similar to borrower defense to repayment claims. The Department is not bound by FTC and CFPB standards and chooses not to adopt them.

Additionally, the Department plays a role as a gatekeeper of taxpayer dollars regarding loan forgiveness—a role not shared by the FTC or CFPB. The Department is unique in that it is responsible for both distributing and discharging loans. The FTC and CFPB do not lend money, like the Department does, and therefore those agencies are not responsible for protecting assets in the same manner as the Department is.

We disagree that the Federal standard, including the definition of misrepresentation, should include

[61] 83 FR 37257.

[62] *Note:* As explained in the next section, below, the Department also revised § 685.206(e)(3)(vi) to include a parenthetical that institutions using national data should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for graduates.

[63] 83 FR 37299.

UDAP violations to ensure that borrowers are protected. As we explained in the 2016 final regulations, we considered the available precedent and determined that it is unclear how such principles would apply in the borrower defense context as stand-alone standards.[64] Such unfair and deceptive practices are often alleged in combination with misrepresentations and are not often addressed on their own by the courts. With this lack of guidance, it is unclear how such principles would apply in the borrower defense context. We would like to avoid for all parties the burden of interpreting other Federal agencies' and States' authorities in the borrower defense context. As a result, we decline to adopt a standard for relief based on UDAP.

Changes: The Department adopts, with some changes, the definition of misrepresentation in the 2018 NPRM for § 685.206(e)(3). As previously noted, the Department adopts the Federal standard in Alternative B in the 2018 NPRM and makes revisions to align the Federal standard with the definition of misrepresentation, such as removing the phrase ''an intent to deceive'' the phrase ''making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan'' from § 685.206(e)(2).

Additionally, the Department revised the regulations to clarify that the list of evidence of misrepresentation in § 685.206(e)(3) is a non-exhaustive list. The Department further amended the description of evidence that a misrepresentation may have occurred to clarify that actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are materially different from those provided by the institution to national ranking organizations may evidence a misrepresentation. The Department also revised its amendatory language to clarify that a representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student evidences a misrepresentation in these final regulations. The Department revised the example of misrepresentation under § 685.206(e)(3)(vi) to include the failure to disclose appropriate State or regional data in addition to national data for earnings in the same field as provided by an appropriate Federal agency.

The Department revised the Federal standard to require a borrower to demonstrate a misrepresentation of a material fact and not a misrepresentation of a material opinion, intention, or law.

Determination of Misrepresentation

Comments: One commenter suggested that the borrower should still be eligible for a defense to repayment discharge when the misrepresentation was made by an employee acting without the school's knowledge or against the school's direction. The commenter notes that if a borrower was harmed by the school's employee or agent, then the school, not the borrower, should be responsible for the harm caused.

Several commenters sought determinations as to whether specific examples of statements or omissions would constitute misrepresentation under the proposed definition. These examples include: A failure to inform a student that the school may close prior to that final decision being made; a failure to disclose that a regulator has taken an adverse action against the school while the matter is on appeal and not final; a school makes a mistake without willful intent; an employee of the school provides inaccurate or unclear information that can be tied to a deficit in training or performance; changes that occur to the information originally provided to the borrower, through no fault of the school; if State or Federal governments make dramatic budgetary reductions in financial aid that result in a reduction of aid promised to a borrower; incorrect information regarding what financial aid is available; changes in costs after a student enrolls; incorrect information regarding the cost of attending the school; differences in reporting to adhere to State, Federal, accrediting agency, and licensing board requirements; Nursing National Council Licensure Examination (NCLEX) passage rates; clinical facility sites utilized during nursing school; institutions stating that a borrower can make the national average of earnings in a particular field, even if that average exceeds those of program graduates; typographical errors in marketing materials produced internally or by outside entities; and falsified data provided to an institutional ranking organization in order to inflate the school's rankings.

One commenter asked whether students at specific institutions would be covered under this regulation, had this standard been in place and given the evidence now available to the Department.

Other commenters sought clarification on what constitutes a deceptive practice or act or omission on the part of a school and requested guidance from the Department regarding what policies to put in place to ensure schools are not misleading students in any way. These commenters also would like to know how compliance with these policies may be enforced.

Some commenters objected to the inclusion within the specific examples of statements or omissions that would constitute a misrepresentation under the proposed definition of ''availability, amount, or nature of financial assistance.'' These commenters note that the volatility of financial aid awards is more often attributable to a change in the student's eligibility, rather than an independent determination by the school.

Another commenter objected to the inclusion within the specific examples of statements or omissions that would constitute a misrepresentation under the proposed definition of ''[a] representation regarding the employability or specific earnings of graduates without an agreement between the school and another entity for such employment or specific evidence of past employment earnings to justify such a representation or without citing appropriate national data for earnings in the same field as provided by an appropriate Federal agency that provides such data.''

The commenter cites research that found that earnings from the Bureau of Labor Statistics exceed the actual earnings of program graduates in gainful employment (GE) programs in 96 percent of programs analyzed, including in almost every one of the top 10 most common GE occupations, even for the program graduates with the highest earnings.

Discussion: A borrower may successfully allege a defense to repayment based on a misrepresentation by a school's employee who acts without the school's knowledge or against the school's direction as long as the borrower demonstrates they reasonably relied on the misrepresentation under the circumstances and that the employee acted with reckless disregard for the truth. The Department will not fault a borrower for failing to recognize that the employee is acting without the school's knowledge or against the school's direction, unless the circumstances clearly indicate the employee is not authorized to make the alleged representations on behalf of the school. These circumstances will help to determine whether the borrower reasonably relied on the misrepresentation of material fact, as

[64] 81 FR 75939–75940.

required by the Federal standard in § 685.206(e)(2)(i).

For example, if an employee in the school's cafeteria who serves food made a misrepresentation about the availability, amount, or nature of financial assistance available to a particular student, that student should reasonably recognize the employee is not authorized to make such representations. The Department will take into consideration whether the school's employee is authorized to act on behalf of the school in determining whether to recover funds from the school.

To address some of the commenter's concerns, the Department is revising § 685.206(e)(3)(vii) to clarify that a misrepresentation may constitute a ''representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment.'' The Department recognizes that a student's eligibility for financial assistance may change and will examine the school's representation in light of the student's eligibility at the time the school made the representation regarding the availability, amount, or nature of any financial assistance available to the student. The school's representation must be materially different in availability, amount, or nature from the actual financial assistance available to the borrower in order to constitute a misrepresentation.

Additionally, the Department revised the proposed definition of the terms ''school'' and ''institution'' to align more closely with the persons or entities who may make a misrepresentation in 34 CFR 668.71. Accordingly, these final regulations expressly define a school or institution to ''include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.''[65] This definition captures the Department's interpretation of the 2016 final regulations, as the preamble to the 2016 final regulations indicates that schools may be held liable for their employees' representations.[66]

The Department agrees that it can be difficult to differentiate between an institution that misrepresents the truth to students as a matter of policy and an individual employee who violates the institution's policies to make the misrepresentation. To determine whether an institution acted with reckless disregard for the truth, the Department may consider the controls that an institution had in place to prevent or detect any misrepresentations. For this reason, it is important that the final regulations provide an opportunity for an institution to contribute to the record. An opportunity to respond in a proceeding is a well-established principle of due process. The Department will determine whether a misrepresentation occurred based on information from both the borrower and the school.

We understand the commenters' interest in further clarification as to whether specific circumstances may constitute a misrepresentation. However, we do not believe it is possible or appropriate to provide an exhaustive list of examples or a hypothetical discussion of the analytical process the Department will undertake to ascertain whether a specific borrower's claim meets the requirements of misrepresentation. The determination of whether a school made a misrepresentation that could be the basis for a borrower defense claim will be made based on the specific facts and circumstances of each borrower defense to repayment application. The Department will carefully examine the facts presented in each application and cannot anticipate the unique facts of each application.

In response to the commenter's request for more clarity regarding the circumstances that may constitute a misrepresentation, the Department made a minor revision to § 685.206(e)(3)(ix). In § 685.206(e)(3)(ix), the Department added that a representation that the institution, its courses, or programs are endorsed by ''Federal or State agencies'' may constitute a misrepresentation if the institution has no permission or is not otherwise authorized to make or use such an endorsement. Institutions should not represent that their courses or programs are endorsed by Federal or State agencies, if these agencies have not endorsed them.

In § 685.206(e)(3)(x), the Department states that a representation regarding the location of an institution that is materially different from the institution's actual location *at the time of the representation* could constitute a misrepresentation for borrower defense purposes. The Department does not intend for this specific provision to apply to institutions that relocate to a new location after a student enrolls to comply with the new FASB standards or after an institution's lease runs out and is not subsequently renewed. Under the Department's definition of misrepresentation, an institution's representation about its location must be accurate at the time when the representation is made. If the institution makes a representation about its location and later changes its location, then the institution should accurately represent its change in location. We expect the implementation of the new FASB standards will increase the number of institutions that relocate, which should not be permitted to result in an increase in the number of borrower defense claims based upon misrepresentations about the school's location as long as the school's representation about its location is accurate *at the time when* the representation is made. Subject to additional material facts and circumstances, an institution that moves to a slightly different location, with comparable facilities and equipment, which does not create an overly burdensome commute, will not be viewed by the Department as having committed a misrepresentation.

The Department acknowledges that allegations against the specific institutions that the commenters referenced are well-known. The discharge applications submitted by students who attended those schools are being evaluated under the pre-2016 regulations. It is not appropriate to speculate how those cases would be decided using a different standard, a different process, and different evidence. The Department does not comment on claims or matters that are pending.

The Department's regulations provide a non-exhaustive list of evidence that a borrower may use to demonstrate that a misrepresentation occurred. Institutions may develop internal controls and compliance policies based on this non-exhaustive list. Institutions are well positioned to determine how to ensure compliance with institutional policies promulgated to prevent and prohibit misrepresentations to students. In these policies, institutions may describe the consequences, including disciplinary measures, that employees face if they make a misrepresentation.

The Department will not determine that a school made a misrepresentation if a student's eligibility for financial aid changed as a result of changes in

[65] 34 CFR 685.206(e)(1)(iv).

[66] 81 FR 75952.

Federal programs or a student's eligibility for aid. The Department, however, is concerned that many institutions engage in strategic dissemination of institutional aid where they provide significant first year aid to attract a student to the institution, but do not continue that level of support throughout the program even when the student meets the requirements for receiving that level of support. Conduct such as this could constitute a misrepresentation, depending on the details of the situation.

Similarly, the Department will not determine that an institution made a misrepresentation for complying with differing requirements of accreditors or States to report multiple job placement rates for a single program, if a student, through no fault of the institution, misunderstands which of those placement rates more accurately reflects his or her likely outcomes. If the institution uses data that is required by accreditors or States in its own publications and materials, the Department encourages institutions to provide context for a student to understand the relevance of the job placement rate or other data required by accreditors or States. For example, institutions with an Office of Postsecondary Education Identification Number (OPE ID) may report job placement rates that include many campuses across the country.

As a result, these institutions may be required to report a rate that is not intended to represent earnings for students who live in parts of the country where wages are lower than average or higher than average. The use of OPE IDs to report outcomes also may cause an institution to appear to be located in one part of the country, even though the campus that a student attends may be at an additional location in another part of the country where prevailing wages differ. Similarly, accreditors and States may define measurement cohorts differently and may have different standards for what constitutes an in-field job placement. Accordingly, an institution may report data accurately based on the various definitions they are required to use, and a student may not understand how to interpret this data. As long as the institution does not use that data in a manner to knowingly mislead or deceive students or with reckless disregard for the truth, the Department will not consider the use of such data to constitute a misrepresentation.

An institution, however, that makes claims about guaranteed employment or guaranteed earnings to borrowers should maintain evidence to support those guarantees. An institution could be considered to have made a misrepresentation if evidence of such guarantees does not actually exist or do not apply to all students to whom the guarantee is made.

We appreciate the commenters' concern regarding discrepancies between BLS and GE earnings data. To clarify, it is important to remember that GE rates, as previously calculated, were based upon earnings measured only a few years after a title IV participating student graduates, while BLS measures earnings of everyone in an occupation, including those who have years of experience and expertise.

Thus, BLS data may more accurately represent long-term, occupational earning potential rather than the expected earnings of an institution's program graduates within two or three years of graduation. Until an expanded College Scorecard provides institutions with median program-level earnings, BLS data is the most reliable source of Federal wage data available to help students understand earnings for particular occupations. BLS data is helpful because a student is generally interested in earnings over the course of a career, and not just a few years after completion of the program.

To address the concerns of commenters that a borrower may misunderstand the national data, the Department also revised § 685.206(e)(3)(vi) to include a parenthetical that institutions using should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for graduates. Such a disclaimer places the national data that an institution may use in context and will help the borrower understand that the national data does not guarantee a specific level of income. Such a disclaimer also will help the borrower understand that the national data may not be representative of what a student will make in the early years of their career or in a particular part of the country.

Changes: The Department is revising 34 CFR 685.206(e)(3)(vi), which provides examples of misrepresentation, to include a parenthetical that instructs institutions to include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.

The Department revised the example of a misrepresentation in § 685.206(e)(3)(vi) regarding the availability, amount, or nature of the financial assistance available to students to expressly state that the representation regarding such financial assistance must be materially different from the actual financial assistance available to the borrower.

In § 685.206(e)(3)(ix), the Department added that a representation that the institution, its courses, or programs are endorsed by ''Federal or State agencies'' may constitute a misrepresentation if the institution has no permission or is not otherwise authorized to make or use such an endorsement.

The Department also revised the proposed definition of the terms ''school'' and ''institution'' to align more closely with the persons or entities who may make a misrepresentation in 34 CFR 668.71.

Borrower Defenses—Judgments and Breach of Contract

Comments: A number of commenters supported the Department's proposal to use State judgments, breaches of contract, and/or other third-party information in its evaluation of, but not as an automatic approval for, borrower defense claims.

Several commenters urged the Department to view breaches of contract and prior judgments as additional bases for a borrower defense claim. One commenter noted that if colleges were in violation of other laws, recognizing such claims would provide relief to wronged borrowers and failure to recognize these types of claims limits a borrower's opportunity to obtain relief.

One commenter noted that although the preamble clarifies that breaches of contracts or judgments may be considered as evidence of a misrepresentation, this position should be explicitly stated in the text of the regulation.

One commenter suggested that the Department modify the rule to require the Department to review any State judgments for relevant information before requiring additional documentation from the borrower, and that if a State judgment satisfies the Federal standard and the school was provided an opportunity to present its evidence, the borrower's claim should be accepted and proceed to the harm stage. Another commenter noted that under the Department's proposal, a person who has been determined to be a victim through a robust judicial process at the State level is denied relief. A different commenter indicated that individual borrowers should not be

required to identify illegal conduct at schools but should be able to rely on State court determinations.

One commenter indicated that the Department should not eliminate breach of contract as a basis for a claim merely because the Department did not find a sufficient number of borrowers asserting those rights in the past as the next crisis may not look like the last one.

Another commenter indicated that the final language should clarify whether a breach of contract can serve as the basis for a claim if it related directly to the educational services provided by the school.

Discussion: The Department appreciates the commenters' support for our proposed regulations.

Unlike the 2016 final regulations, the Federal standard in these final regulations does not include a breach of contract as a basis for a borrower defense to repayment claim. The 2016 final regulations provide that a borrower may assert a borrower defense to repayment, ''if the school the borrower received the Direct Loan to attend failed to perform its obligations under the terms of a contract with the student.'' [67] The Department, however, did not identify the elements of a breach of contract and did not define what may constitute a contract between the school and the borrower. The Department noted in the 2016 NPRM that ''a contract between the school and a borrower may include an enrollment agreement and any school catalogs, bulletins, circulars, student handbooks, or school regulations'' and cited to two Federal cases, one of which is unpublished.[68] The Department further provided in the preamble of the 2016 final regulations that ''it is unable to draw a bright line on what materials would be included as part of a contract because that determination is necessarily a fact-intensive determination best made on a case-by-case determination.'' [69] The Department declined to adopt a materiality element with respect to a breach of contract and did not define the circumstances in which an immaterial breach may satisfy the Federal standard.[70] Finally, the Department did not tie the breach of contract basis of the Federal standard to State law.

We continue to acknowledge that a breach of contract may depend on the unique facts of a claim, but are concerned that both borrowers and institutions will not know how the Department determines what constitutes a contract or a breach of contract with respect to borrower defense to repayment claims. The Department does not publish its decisions with respect to an individual borrower's claims and, thus, the public will not be able to know or understand the facts or circumstances the Department considers in accepting a breach of contract claim that satisfies the Federal standard.

We also are concerned that the lack of clarity with respect to breach of contract as a basis for a borrower defense to repayment claim will lead to uncertainty and confusion among schools and borrowers in different states because the breach of contract basis in the 2016 Federal standard is not tied to or based on State law. For example, contrary to the Federal case law cited in the preamble of the 2016 final regulations, the Supreme Court of Virginia expressly held that statements in an institution's ''letters of offers of admission from the College's Admissions Committee; correspondence, including email, among the College's representatives and the students; and the College's [ ] Academic Catalog'' did not constitute a contract between the school and its students.[71] These materials contained representations that a female liberal arts college, which had provided an education to women only for over 100 years, would remain single-sex.[72] The school's catalog even expressly stated: The school ''offers an education fully and completely directed toward women. In a time of increasing opportunities for women, it is essential that the undergraduate years help the student build confidence, establish identity, and explore opportunities for careers and for service to the society that awaits her.'' [73]

The Supreme Court of Virginia ruled that these representations did not constitute a contract and, thus, admitting male students could not constitute a breach of contract claim.[74] Under the 2016 final regulations, it is not clear whether such representations in a school's catalog or other materials may constitute a breach of contract in satisfaction of the Federal standard if the school then began to admit male students subsequent to the claimant's enrollment, as the breach need not be material in nature. Breach of contract laws vary among States, and the breach of contract standard in the 2016 final regulations may be in contravention of some breach of contract laws such as the breach of contract laws in Virginia. In promulgating the 2016 final regulations, the Department expressly anticipated that guidance may eventually be necessary to further define breach of contract.[75] The Department does not wish to maintain a borrower defense regime that increases uncertainty as to what constitutes a contract and how that contract may be breached. Instead of maintaining a Federal standard that requires more clarification through guidance, the Department has decided to provide more certainty and clarity through regulations that provide a different Federal standard.

Unlike the Federal standard in the 2016 final regulations, the Federal standard in these final regulations requires a misrepresentation of material fact upon which the borrower reasonably relied in deciding to obtain a loan. The requirements of materiality and reasonable reliance provide more certainty and clarity. A breach of contract claim, unlike a claim of fraud or material misrepresentation, does not necessarily require any reliance by the borrower.[76] If the borrower does not rely on a school's promise to perform a contractual obligation, the borrower may not have suffered harm as a result of the school's breach of contract.

For example, if the school represents in its catalog that it will publish the number of robberies in a specific geographic area in a crime log but fails to do so, the school may have failed to perform its obligation. Assuming *arguendo* that this failure constitutes a breach of contract claim, such a breach likely will not affect the benefit the student receives from the education. Such a breach also likely is not material in nature. A Federal standard that requires a material misrepresentation and reliance by a borrower provides a more accurate gauge for any harm the student may have suffered. A more accurate gauge of harm to the student will enable the Department to more easily determine the amount of relief to provide in a successful borrower defense to repayment claim.

The Department is not eliminating breach of contract as the basis for a claim merely because the Department did not find a sufficient number of claims. The Department believes that a breach of contract that directly and clearly relates to enrollment or

[67] 34 CFR 685.222(c).

[68] 81 FR 39341 (citing *Ross* v. *Creighton University,* 957 F.2d 410 (7th Cir. 1992) and *Vurimindi,* 435 F. App'x at 133 (quoting *Ross*)).

[69] 81 FR 75944.

[70] *Id.*

[71] *Dodge* v. *Trustees of Randolph-Macon College Woman's College,* 661 SE2d 801, 802–03 (Va. 2008).

[72] *Id.*

[73] *Id.* at 802.

[74] *Id.* at 803–04.

[75] 81 FR 75994.

[76] *Compare* Restatement (First) of Contracts section 312 (2018) *with* Restatement (First) of Contracts sections 470–471.

continuing enrollment or the provision of educational services may be used as evidence in support of a borrower defense to repayment claim. Standing alone, however, a breach of contract, will not be sufficient to satisfy the Federal standard.

Similarly, the Department acknowledges that if a borrower has obtained a non-default, favorable contested judgment against the school based on State or Federal law in a court or administrative tribunal of competent jurisdiction, then there may circumstances when the borrower may use such a judgment as evidence to satisfy the Federal standard in these final regulations.

For example, where a borrower obtains a judgment against a school for statements it made to the borrower about licensure passage rates for a program in which the borrower enrolled, and court found that the school knew the statement to be false and that the borrower suffered financial harm, the borrower may use the judgment as evidence in support of his or her application to seek a discharge of a Direct Loan or a loan repaid by a Direct Consolidation Loan. These regulations do not prohibit a borrower from pursuing relief from courts or administrative tribunals. For example, settlements negotiated by States have included elimination of private loans, reimbursement of cash payments, and repayment of outstanding Federal loan debt. However, the defense to repayment provision limits relief to Federal student loan repayment obligations and does nothing to assist students who used cash, college savings plans, or other forms of credit to pay tuition.

Unlike the 2016 final regulations, a judgment, standing alone, will not necessarily automatically satisfy the Federal standard. If the borrower has obtained a judgment against a school, then the court or administrative tribunal very likely provided an adequate remedy to the borrower as part of the judgment. Accordingly, the Department may not be able to offer any additional relief.

Even if the Department may offer further relief, the Federal standard should not include an inherent assumption that the relief provided by the court or administrative tribunal was insufficient. Accepting judgments as evidence in support of borrower defense claims allows for the Department to undertake the necessary analysis to determine whether additional relief is warranted, but including such judgements as an automatic basis to qualify for relief presumes more than what is appropriate in all cases. We should not supplant the judicial system by granting relief that a court or administrative tribunal did not deem necessary.

The Department chose not to use a State law standard in the 2016 final regulations because a State law standard may result in inequities among borrowers who qualify for relief. If one State's laws are more generous than those in another State, then two equally situated borrowers may obtain very different results in their respective State courts. If a judgment based on State law automatically qualifies a borrower for a borrower defense to repayment, then inequities among borrowers will perpetually continue. Accordingly, the Department has determined that a judgment against the school, alone, should not constitute the Federal standard.

In order to ensure that both borrowers and institutions have due process rights, these final regulations add new steps to the borrower defense to repayment adjudication process that provides both with an opportunity to provide evidence and respond to evidence provided by the other party. Therefore, automatic relief under any circumstance would be inappropriate, especially since the circumstances that resulted in a breach of contract may or may not meet the Federal standard for misrepresentation. As such, while a judgment or breach of contract related to enrollment or the provision of educational services may serve as compelling evidence to support a borrower's borrower defense to repayment claim, the Department cannot award automatic borrower defense relief since that would eliminate the opportunity for the institution to respond to the borrower's claim with the Department. The Department sufficiently explained in this Preamble that a judgment and/or a breach of contract may be used as evidence in support of a borrower defense to repayment claim. Changing the amendatory language to this effect is not necessary and may mislead or confuse borrowers by implying that a judgment or breach of contract may independently and automatically satisfy the Federal standard. The Federal standard in these final regulations marks a departure from the Federal standard in the 2016 final regulations with respect to a judgment or breach of contract, and the Department does not wish to cause confusion.

Changes: None.

Borrower Defenses—Provision of Educational Services and Relationship With the Loan

Comments: Some commenters supported the Department's proposal to exclude defense to repayment claims that are not directly related to the provision of educational services. Some commenters also supported the definition the Department proposed for the provision of educational services.

Other commenters argued that the limitation of the provision of educational services to a borrower's program of study was inappropriately narrow. These commenters suggested that the borrower's claim should apply to all Federal student loans, regardless of how the funds were spent, and to the school's pre- and post-enrollment activities. One commenter also stated that the provision of educational services is too narrowly defined, because schools may have made promises about the quality of the education that fall outside of the specific requirements of accreditors or State agencies, but that may significantly affect the borrower's educational experience. This commenter also asserted that the Department failed to adequately justify its decision to limit the provision of educational services only to those related to the borrower's program of study.

Another commenter objected to the definition limiting misrepresentation to circumstances where the school had withheld something ''necessary for the completion'' of the program, as that would leave too much room for abuse by schools.

One commenter found it needlessly inimical to require that a misrepresentation relate to a borrower's program of study for the borrower to make a defense to repayment claim. The commenter argued that the value of a degree rests in large part on the reputation of the school and, if that reputation is tarnished or destroyed, the value of the degree is as well.

A group of commenters asked what ''educational resources'' means. Additionally, they noted that accrediting agencies, State licensing agencies, or authorizing agencies may require schools to maintain certain licensure passage or job placement rates in their programs, but there are not ''requirements for the completion of the student's educational program.'' These commenters inquired whether the definition of provision of educational services excludes borrower defenses on the basis of misrepresentations about job placement and exam passage rates.

These commenters further inquired whether a particular attribute or representation regarding transferability of credits constitutes a ''requirement for the completion of the student's educational program.'' These commenters noted that only subparagraph (J) of proposed § 685.206(d)(5)(iv), in the 2018 NPRM, refers to ''educational resources'' and inquired whether subparagraph (J) is the only provision that may serve as the basis of a misrepresentation regarding the provision of educational services.

Discussion: We thank the commenters for their support of the proposed regulations pertaining to the provision of educational services.

As noted in the NPRM, the Department included a definition of ''provision of educational services'' at the request of some of the non-Federal negotiators. The Department acknowledged that there are well-developed bodies of State law that explain this term, and each State may define this term differently. Accordingly, in the NPRM, we concluded that the term ''provision of educational services'' is subject to interpretation and proposed to define that term as ''the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program.'' [77] A misrepresentation relating to the ''provision of educational services'' thus is clearly and directly related to the borrower's program of study.

The Department expects the school's communications and acts that are directly or clearly related to the provision of educational services to conform to the Federal standard set forth in these final regulations.

We do not believe it is appropriate to consider acts or omissions unrelated to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was made as relevant to a borrower defense claim. For example, under the Department's definition, an institution that advertises a winning sports team does not make a misrepresentation for borrower defense purposes, if in years subsequent to a borrower's enrollment the team has less successful seasons. Similarly, an institution that advertises certain on-campus restaurants does not make a misrepresentation for borrower defense purposes if one or more of those restaurants closed their on-campus locations and were no longer available to students who purchased a campus meal plan.

However, if, for example, an institution represented in their college catalog that they provided highly-qualified faculty for the business program, modern equipment, low teacher-to-student ratios, and excellent training aids, but actually provided only one unqualified teacher for the program—who was also the school's registrar—one course session of forty-two students (all taking different level courses), and only two 10-key adding machines, then, with this combination of issues, the institution may have made a misrepresentation that could be used as a basis for a discharge application.[78]

Similarly, it is likely a misrepresentation when an institution insists in its marketing materials that its online program is ''substantially identical'' to the same course offered in the traditional classroom setting, but only provided PowerPoint slides from in-class courses without any accompanying lectures or videos, scanned copies of books with cut-off information and blurred entire sentences, and instructors that did not prepare course materials and were hardly involved at all in any actual online instruction.[79]

The Department disagrees that it should allow a borrower's defense to repayment application to apply to all Federal student loans, irrespective of how the borrower spends the funds. These loans are Federal assets, and the Federal taxpayer should not be liable for the choices of a borrower not related to a loan for enrollment at the school or to the provision of education services for which the loan was made.

A school's pre- and post-enrollment activities may support a borrower defense to repayment application if the institution's pre- or post-enrollment acts or omissions directly and clearly relate to the making of a loan for enrollment or continuing enrollment at the school or to the provision of education services for which the loan was made. The Department revised both the regulations on the Federal standard and the definition of misrepresentation to clarify that an institution's act or omission that directly and clearly relates to the enrollment or continuing enrollment at the institution may constitute grounds for a borrower defense to repayment claim.

Although the Department rejected similar requests by commenters in the past, the Department accepts these requests, which non-Federal negotiators also made during the most recent negotiated rulemaking sessions, to clarify that the provision of educational services must relate to the borrower's program of study. In adjudicating borrower defense to repayment applications, the Department seeks to avoid making inconsistent determinations. Tying the provision of educational services to the student's program of study will result in more consistent interpretations of the term ''provision of educational services.'' This definition provides greater clarity as claims related to more general concerns associated with the institution's provision of educational services will not be considered. The Department does consider enrollment in general education courses prior to the borrower's selection of a major or educational service provided in relation to a student's prior major to be included in the definition of a program of study.

The definition of ''provision of educational services'' is based on educational resources as those resources provided by the institution that are required by an institution's academic programs, its accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program. Educational resources may include an adequate number of faculty to fulfill the institution's mission and goals or successful completion of a general education component at the undergraduate level that ensures breadth of knowledge. The Department cannot describe all the educational resources that various accrediting agencies or State licensing or authorizing agencies may require for completion of the student's educational program, so we decline to provide an exhaustive list in these final regulations.

The definition of the provision of educational services does not categorically exclude all borrower defenses on the basis of misrepresentations about job placement and exam passage rates. The final regulations define a misrepresentation as directly and clearly related to the making of a loan for enrollment at the school or to the provision of educational services for which the loan was made. Misrepresentations about job placement and exam passage rates may directly or clearly be related to the making of a loan for enrollment at the school.

A representation regarding transferability of credits may constitute a requirement for the completion of the student's educational program depending on the circumstances. If the

[77] 83 FR 37254.

[78] *American Commercial Colleges, Inc.* v. *Davis,* 821 S.W.2d 450, 452 (Tex. App. Eastland 1991).

[79] *Bradford* v. *George Washington University,* 249 F.Supp. 3d 325, 330 (D.D.C. 2017).

school makes a statement that all credits from another school are transferable and may be used to complete an educational program with knowledge that few or none of the credits are transferable, then that school likely would be considered to have made a misrepresentation as defined in these final regulations.

The definition of ''provision of educational services'' relates to elements necessary for the completion of the student's educational program, but a misrepresentation is not limited to circumstances where the school had withheld something ''necessary for the completion'' of the program. As explained above, a misrepresentation may be an act or omission that directly and clearly relates to the making of a loan for enrollment at the school.

We disagree with the commenter who asserted that defenses to repayment should be based on harm to a school's general reputation. Institutions may suffer reputational damage for a number of reasons, including, for example, poor performance of an athletic team, sexual misconduct on the part of a member of the staff or instances when a staff member accepts payment in exchange for boosting a student's chances to be admitted. But reputational harm does not generally have a widespread impact on the quality of education the students receive. An institution's level of admissions selectivity has a significant impact on the institution's reputation, but it would be hard to argue that it is the fault of the institution if a borrower selected a less-selective institution and did not benefit from the advantages of a social network typical of an elite institution. A borrower would not be entitled to borrower defense to repayment relief as a result of reputational damage, although if the institution misrepresented its admissions selectivity or admissions criteria, then the borrower may be eligible for relief. A school's reputation is not always tied to misrepresentations as defined for purposes of these regulations, but a borrower's program of study remains integral to the purpose and use of the loan.

Changes: The Department is not making any changes to the definition of ''provision of educational services.'' The Department is revising the definition of ''misrepresentation'' and the Federal standard to clarify that an institution's acts or omissions that clearly and directly relate to enrollment or continuing enrollment at the institution or provision of educational services for which the loan was made may constitute grounds for a borrower defense to repayment application.

Effective Date

Comments: A group of commenters noted that the Department's 1995 Notice of Interpretation, 60 FR 37769, clarified that the act or omission of a school, in order to serve as the basis for a borrower defense, must ''directly relat[e] to the loan or to the school's provision of educational services for which the loan was provided.'' These commenters assert that if this Notice of Interpretation is not sufficiently clear, then the Department should apply its definition of ''provision of educational services'' in these final regulations to existing loans instead of to loans first disbursed on or after July 1, 2019.

Discussion: Although the Department issued a Notice of Interpretation in 1995 to clarify that an act or omission must directly relate to the loan or the school's provision of education services, commenters in 2016 requested that the Department clarify that the provision of educational services is tied to the student's program of study. Some of the non-Federal negotiators made this same request during the negotiated rulemaking in 2017, and the Department has responded by providing a definition for the term ''provision of educational services.'' For concerns discussed elsewhere in these final regulations regarding retroactively applying definitions and standards, the Department will only apply this definition to loans first disbursed on or after July 1, 2020.

Changes: These final regulations provide that the definitions of provision of educational services and misrepresentation will apply to loans first disbursed on or after July 1, 2020.

Borrower Defenses—Consolidation Loans

Comments: A group of commenters contend that FFEL borrowers should have the same rights to a borrower defense discharge as Direct Loan borrowers and that pursuant to § 455(a) of the HEA, Direct Loans and FFEL loans are to have the same terms, conditions, and benefits. Another commenter argued that borrower defense should be available to FFEL borrowers without requiring consolidation or proof of any special relationship between their schools and FFEL lenders.

A group of commenters asserted that there are several problems with the proposal to make consolidation a necessary prerequisite for FFEL borrowers to access the borrower defense to repayment process. Requiring consolidation creates another administrative obstacle for borrowers. These commenters noted other obstacles include the Department's proposal to preclude borrowers with new Direct Loans, consolidated after the effective date of the rule, from asserting defenses unless they are either in collection proceedings or within three years from leaving the school.

These commenters also noted that not every FFEL borrower is eligible to consolidate into a Direct Consolidation Loan and that the Department should change the rules to permit all FFEL borrowers to do so. These commenters further asserted that the Department should allow for refunds of amounts already paid on FFEL loans. They urged the Department to give FFEL borrowers more certainty that their loans will be discharged by committing to a pre-approval process whereby the Department will determine FFEL borrowers' eligibility for discharge, contingent upon consolidation, prior to requiring consolidation or advising borrowers to consolidate to access relief.

Another group of commenters also requested that the Department outline what policy will apply to borrowers whose borrower defense applications are submitted prior to the effective date of the final rule but are not yet approved on that date, including FFEL borrowers that have requested pre-approval of their application prior to applying for a Direct Consolidation Loan.

This group of commenters suggested specific amendatory language regarding administrative forbearance for FFEL loan borrowers while the Department makes a preliminary determination before the borrower consolidates his or her loan(s). These commenters explained that administrative forbearance would be more appropriate than discretionary forbearance due to the limit imposed on discretionary forbearance. This group of commenters also suggested early implementation of administrative forbearance and suspension of collection activities.

These commenters noted that the final regulations should allow servicers to suspend collection activity while the Department makes a preliminary determination (prior to the borrower consolidating his or her loans) as to whether relief may be appropriate under the new Federal standard.

Discussion: The Department derives its authority for the borrower defense to repayment regulations from § 455(h) of the HEA, which specifically concerns Direct Loans, not FFEL loans. The statutory authority for the borrower defense to repayment regulations does not allow FFEL borrowers to access the borrower defense to repayment process unless the FFEL borrower consolidates

their loans into a Direct Consolidation Loan. Direct Consolidation Loans are made under the Direct Loan Program. Generally, the Department views a consolidation loan as a new loan, distinct from the underlying loans that were paid in full by the proceeds of the Direct Consolidation Loan.

Accordingly, the Department's existing practice is to provide relief under the Direct Loan authority if a qualifying borrower's underlying loans have been consolidated into a Direct Consolidation Loan under the Direct Loan Program. As a corollary, if consolidation is being considered depending on the outcome of any preliminary analysis of whether relief might be available under § 685.206(c), relief cannot be provided until the borrower's loans have been consolidated into a Direct Consolidation Loan. Although commenters allege the Department is creating administrative obstacles for borrowers, the Department is allowing FFEL borrowers who are eligible to consolidate their loans into a Direct Consolidation Loan to receive relief under these regulations. This parallels, for example, how the Department makes FFEL borrowers eligible for PSLF, which is another opportunity limited to Direct Loan borrowers.

FFEL Loans are governed by specific contractual rights and the process adopted here is not designed to address those rights. We can address potential relief under these procedures for only those FFEL borrowers who consolidate their FFEL Loans into a Direct Consolidation Loan. FFEL borrowers have other protections in their master promissory note and the Department's regulations. Since 1994, and to this day, the FFEL master promissory note states that for loans provided to pay the tuition and charges for a school, ''any lender holding [the] loan is subject to *all the claims and defenses* that [the borrower] could assert against the school with respect to [the] loan.'' [80] As noted in the 2016 final regulations, the Department adopted this provision from the FTC's Holder Rule provision, and the Department's 2018 NPRM did not propose to revise the regulation regarding this provision.

Upon further consideration, however, the Department will continue placing the borrower's loans into administrative forbearance for Direct Loan borrowers while a claim is pending.[81] Interest still accrues during administrative forbearance, and will capitalize if the claim is not successful. The accrual of interest will deter borrowers from submitting a borrower defense to repayment application if no misrepresentation occurred. The Department amended these final regulations to clarify the borrower defense to repayment application will state that the Secretary will grant forbearance while the application is pending and will notify the borrower of the option to decline forbearance. Similarly, FFEL loans will be placed into administrative forbearance and collection will cease on FFEL loans, upon notification by the Secretary that the borrower has made a borrower defense claim related to a FFEL loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k).

In the 2018 NPRM, the Department did not propose to revise regulations in § 682.220, concerning the eligibility of FFEL borrowers to consolidate into a Direct Consolidation Loan, and maintains that the current eligibility requirements remain appropriate. The Department also did not propose to allow for refunds of amounts already paid on FFEL loans, as such a proposal exceeds its authority under section 455(h) of the HEA. The Department is limited by statute to discharging and refunding no more than the amount of the Direct Loan at issue, and only discharge of the remaining balance on the consolidated loan is possible.

Finally, the Department does not agree with the suggestion that we revise the final regulations to create a ''pre-approval'' process to determine FFEL borrowers' eligibility for discharge, contingent upon consolidation. Notably, the 2016 final regulations did not include any regulations about a ''pre-approval'' process. The preamble of the 2016 final regulations explained that the Department will provide FFEL borrowers with a preliminary determination as to whether they would be eligible for relief on their borrower defense claims under the Direct Loan regulations, if they consolidated their FFEL Loans into a Direct Consolidation Loan.[82] However, no information was provided as to how such a determination would be made, what would happen if additional information made it clear that a misrepresentation did not actually occur, or that after giving advice not to consolidate, additional evidence makes it clear that it did. Importantly, FFEL payments cannot be refunded. Such a preliminary determination process, however, is not possible under these final regulations.

These final regulations create a robust process whereby borrowers and schools have an opportunity to review each other's submissions. The Department will not be able to provide a borrower with an accurate preliminary determination without weighing any evidence and issues that the school presents in its submission. Accordingly, the Department will not include a preliminary determination process under these final regulations.

The Department still believes it is appropriate to determine what standard would apply to a particular borrower's discharge application based upon the date of the first disbursement of the Direct Consolidation Loan. Therefore, for Direct Consolidation Loans first disbursed on or after July 1, 2020, the standard that would be applied to determine if a defense to repayment has been established is the Federal standard in § 685.206(e). The Department understands that this approach may deter some borrowers who might otherwise wish to consolidate their loans, but do not wish to be subject to the Federal standard and associated time limits we adopt in these final regulations. The Department believes that this concern is outweighed by the benefits of this standard. This approach is consistent with the longstanding treatment of consolidation loans as new loans, and we believe it will provide additional clarity as to the standard that applies, especially in cases where borrowers are consolidating more than one loan. As under the existing regulations, a borrower will be able to choose consolidation if she or he determines it is the right option for them.

Changes: The Department is leaving in effect the revisions and additions to §§ 682.211(i)(7) and 682.410(b)(6)(viii) that were made in the 2016 final regulations.

Accordingly, we will ask loan holders to place FFEL loans into administrative forbearance and suspend collection upon notification by the Secretary that the borrower has made a borrower defense claim related to a FFEL loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k).

[80] 34 CFR 682.209(g).

[81] These final regulations, unlike the 2016 final regulations, do not expressly state that a borrower who asserts a borrower defense to repayment application will be provided with information on availability of income-contingent repayment plans and income-based repayment plans because this information is always available to borrowers. Borrowers also may avail themselves of such information on the Department's website at *https://studentloans.gov/myDirectLoan/ibrInstructions.action.*

[82] 83 FR 75961.

Additionally, the Department is revising § 685.205(d)(6) to provide that Direct loans will be placed in administrative forbearance for the period necessary to determine the borrower's eligibility for discharge under § 685.206, which includes the borrower defense to repayment regulations in these final regulations. The Department also is revising § 685.206(e)(8) to clarify the borrower defense to repayment application will state that the Secretary will grant forbearance while the application is pending, that interest will accrue during this period and will capitalize if the claim is not successful, and will notify the borrower of the option to decline forbearance.

In addition, we are revising the final regulations to clarify that the standard that applies to a borrower defense claim is determined by the date of first disbursement of a Direct Loan or Direct Consolidation Loan.

Borrower Defenses—Evidentiary Standard for Asserting a Borrower Defense

Preponderance of the Evidence, Clear and Convincing Evidentiary Standards

Comments: There were many comments on the preponderance of the evidence and clear and convincing evidentiary standards under consideration by the Department. Those who supported a preponderance of the evidence standard noted that it is the typical evidentiary standard for most civil lawsuits. Some stated that a higher standard would make it impossible for borrowers to prove a misrepresentation, as defined by the proposed regulations, while others argued that a higher standard would be out of step with consumer protection law and the Department's other administrative proceedings. Some commenters expressed concern that a higher standard would create new barriers to relief for defrauded students. Other commenters pointed to the HEA's intention to provide loan discharges based on institutional acts or omissions, which they asserted normally would be adjudicated on a preponderance of the evidence standard.

One commenter noted that a heightened standard of proof is particularly inappropriate for an administrative proceeding that does not include discovery rights for the borrower, which would be available to the borrower in court. This commenter noted that the vast majority of borrowers will not have access to a lawyer.

Other commenters opposed the clear and convincing evidence standard. Some commenters asserted that there is no principled or logical basis for imposing the higher standard on borrowers seeking a loan discharge. Several commenters asserted that elevating the evidentiary standard to clear and convincing evidence would create substantial new barriers to relief for defrauded students, fail to protect them against institutional misconduct, and effectively prevent them from receiving the relief to which they are legally entitled. Another commenter noted that the clear and convincing evidence standard would present an extreme change.

One commenter noted that the Department cites no support to suggest the evidentiary standard prevents or dissuades consumers from submitting claims. This commenter asserted that it seems likely that most borrowers do not know what the evidentiary standard expected of them is, would not be able to contextualize evidentiary requirements without legal assistance, and would not change their behavior even if they did understand the expectations for evidence. Similarly, another commenter asked what evidence the Department considered that a heightened evidentiary standard may be necessary to deter frivolous or unwarranted claims for relief.

Opponents to the preponderance of the evidence standard often favored a clear and convincing evidence standard because it would protect institutions and taxpayers from frivolous borrower defense claims. Those who supported a clear and convincing evidence standard argued that it strikes a balance between the looser preponderance of the evidence standard and the far more stringent beyond a reasonable doubt standard.

One commenter generally supported the clear and convincing evidence standard and asserted that the Department should provide the strongest evidentiary standard possible that also is in accordance with standard consumer protection practices.

Some commenters expressed concern that under the preponderance of the evidence standard, a misstatement related to any provision of education services, no matter how small, would support a borrower defense claim, requiring the school to repay the Department and serving as a black mark against the school. These commenters worried that under the lower evidentiary standard, colleges would disclaim everything possible, disclose nothing to students, and treat them as potential litigants.

Many commenters agreed that a school should be held accountable for knowingly providing false or misleading information to borrowers. However, they caution that misrepresentation is a serious accusation that can seriously damage a school, even if the Department determines that the institution did not make a misrepresentation. These commenters argue that a borrower making such a claim should be required to provide clear and irrefutable evidence.

Discussion: The Department appreciates the many thoughtful comments received regarding the evidentiary standard appropriate for adjudicating defense to repayment claims. The Department considered the clear and convincing evidence standard because this standard is typically the standard required by courts in adjudicating claims of fraud.[83]

The Department has been persuaded, however, that for borrowers, without legal representation or access to discovery tools, the clear and convincing evidence standard may be too difficult to satisfy. Therefore, we adopt a preponderance of the evidence standard for borrower defense claims in these final regulations. We note that this is the same evidentiary standard used in the 2016 final regulations.

The Department's decision to engage institutions in developing a complete record prior to adjudicating a defense to repayment claim will ensure that decisions are made on the basis of a strong evidentiary record. Such a record will help to protect institutions and taxpayers, while helping students with meritorious claims compile necessary information.

The Department agrees that access to information may differ between students and institutions. We also wish to emphasize to consumers that, given the sizeable investment one makes in a college education, it is incumbent upon students to shop wisely and get information in writing before making a decision largely dependent upon that information. The Department seeks to establish a policy that encourages students to fulfill responsibilities they have in seeking information and evaluating the accuracy and validity of that information when making a decision as important as selecting an institution of higher education.

The Department does not wish to create a standard so low that students either alone, or with the help of unscrupulous third parties, attempt to

[83] *See* Restatement (Third) of Torts: Liab. For Econ. Harm section 9 TD No 2(2014) (''The elements of a tort claim ordinarily must be proven by a preponderance of the evidence, but most courts have required clear and convincing evidence to establish some or all of the elements of fraud.'').

induce statements that could then be misconstrued or used out of context to relieve borrowers who otherwise received an education from their repayment obligations.

Borrowers should be protected against misrepresentations made by institutions that result in financial harm to them, but at the same time, the Department must uphold a sufficiently rigorous evidentiary standard to ensure that the defense to repayment process does not impose unnecessary or unjustified financial risk to institutions, taxpayers, or future students. A borrower who makes an unsubstantiated claim about a school with the Department incurs comparatively little risk.

The Department believes it has established an evidentiary standard in these final regulations that carefully balances the need to protect borrowers in instances where they suffered harm as a result of misrepresentations with the need to maintain the integrity of the student loan program. In addition, this change is appropriate so that borrowers shop wisely, take personal responsibility for seeking the best information available and make informed choices, and accept the benefits of student loans with the full understanding that they, generally, are legally obligated to repay those loans in full.

The Department acknowledges that some commenters supported the clear and convincing evidence standard. The Department agrees with commenters that a school should be held accountable for knowingly providing false or misleading information to borrowers and that a misrepresentation is a serious accusation that can damage a school's reputation. A clear and convincing evidence standard for borrower defense to repayment claims may have been appropriate if the Department adopted a different definition of misrepresentation. In these final regulations, misrepresentation constitutes a statement, act, or omission by an institution that is false, misleading, or deceptive and that was made with knowledge of its false, misleading, or deceptive nature. The Department provides a non-exhaustive list of types of evidence that may be used to prove that an institution made a misrepresentation.

Changes: The Department adopts the ''preponderance of the evidence'' standard for both affirmative and defensive claims in these final regulations. It is appropriate to require a borrower to prove that an institution, more likely than not, made the alleged misrepresentation.

Multiple Standards

Comments: One commenter objected to the proposal to use a higher evidentiary standard for borrowers based on their repayment status—*i.e.,* to apply the clear and convincing standard to borrowers asserting affirmative claims, while applying a preponderance of the evidence to those asserting defensive claims.

Another commenter stated that if affirmative claims are allowed, then affirmative claims should be adjudicated under a clear and convincing evidence standard.

One commenter asserted that the Department should use the clear and convincing evidence standard for both affirmative and defensive claims.

Discussion: Although we considered applying a clear and convincing evidentiary standard to affirmative claims, we ultimately decided to apply the preponderance of the evidence standard to all claims, as described above. As previously noted, the definition of misrepresentation is more stringent than the 2016 definition and, thus, a preponderance of the evidence standard for all claims is more appropriate to balance the Department's interests in providing a fair, accessible, and equitable process for both borrowers and schools. Because a borrower is required to prove that an institution's act or omission was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth, there is no reason to require a higher evidentiary standard based on the borrower's repayment status. Applying a higher evidentiary standard to borrowers who are not in default may encourage these borrowers to default on the loans to receive the benefit of a lower evidentiary standard. After weighing the various interests, the Department determined that applying a higher evidentiary standard to affirmative claims, but not defensive claims is not justified.

Changes: The Department adopts the ''preponderance of the evidence'' standard for both affirmative and defensive claims in these final regulations.

Evidence Presented in Support of the Claim

Comments: Some commenters contended that a borrower's affidavit or sworn testimony should constitute sufficient evidence to support a defense to repayment claim. These commenters argued that a borrower would typically be unable to obtain evidence from a school to evince recklessness or intent and requiring more than their testimony would erect too great of a barrier to recovery.

Some commenters suggested that a borrower should have physical forms of evidence to show misrepresentation by the school.

Another commenter expressed concern that if any evidence is permitted beyond the borrower's sworn affidavit, schools could continue to defraud borrowers by submitting false or manufactured evidence in response to borrowers' claims.

Discussion: The Department thanks the commenters for their opinions, but disagrees that a borrower's affidavit or sworn testimony, alone, is sufficient evidence to warrant a decision by the Department that has significant financial consequences not just for borrowers, but for institutions, current and future students, and taxpayers who ultimately will bear the costs if there are high volumes of discharges. Taking such an approach could increase the likelihood that future students will bear the cost of prior students' borrower defense claims in the form of increased tuition. Under the process adopted in these final regulations, a borrower may submit a sworn affidavit in support of the borrower defense application, but the institution will have an opportunity to respond and provide its own rebuttal evidence, if any. The borrower will have an opportunity to reply. Then the Department, with the full benefit of all the evidence presented, will adjudicate the claim. The Department believes that these procedures, similar to those used at certain stages in judicial proceedings, provide protections against frivolous affidavits.

The Department believes that the defense to repayment regulations can play an important role in helping borrowers become more educated consumers, including by providing an incentive for institutions to put all claims material to the student's enrollment decision in writing. As more information becomes available to borrowers, they will be better able to make informed decisions.

Borrower defense to repayment claims may be submitted three years after a borrower exited a program at a particular institution, and both the borrower and the institution may have difficulty recalling the precise language that was used or the information verbally conveyed. To be sure, institutions that make misrepresentations should suffer harsh consequences, but any finder of fact, including the Department as an adjudicator of borrower defense claims, is ill-equipped, many years after the

fact, to make determinations based solely on one party's statement. Therefore, an affidavit, alone, is not sufficient evidence to adjudicate a claim that could be worth tens, if not hundreds, of thousands of dollars to the borrower making the affidavit.

The Department is removing the phrase ''intent to deceive'' in the Federal standard and will not require a borrower to demonstrate such intent in order to establish a borrower defense claim. Instead, the borrower must prove by a preponderance of the evidence that an institution made a misrepresentation of material fact upon which the borrower reasonably relied in deciding to obtain a loan that is clearly and directly related to enrollment or continuing enrollment at the institution or for the provision of educational services for which the loan was made. The definition of misrepresentation also does not expressly require the borrower to demonstrate that the institution acted with intent to deceive. As previously stated, a misrepresentation constitutes a statement, act, or omission that was made with knowledge of its false, misleading, or deceptive nature or with reckless disregard for the truth.

As noted elsewhere in this preamble, evidence that borrowers may present to the Department includes, but is not limited to: Web-based advertisements or claims, direct written communications with an institution official, information provided in the college catalog or student handbook, the enrollment agreement between the institution and the student, or transcripts of depositions of school officials. It is important for students to obtain, review, and retain written materials provided by the school; if the student is told information materially different than the information provided in writing, the Department will consider the evidence of the alleged verbal misrepresentation. Students should seek a written explanation to clarify any discrepancies.

The Department disagrees that an institution is likely to submit fraudulent documents to the Department in response to a borrower defense to repayment application. Institutions face grave risks for making any falsified or misleading representation to the Department. The Department may remove the institution from all title IV programs if the institution submitted false or manufactured evidence in response to a borrower's claim. Under no circumstance is a title IV participating institution permitted to commit fraud on students or the Department.

The Department's goal is to ensure that defrauded students have reasonable access to financial remedies while ensuring students have access to the information they need to be smart consumers by making decisions based on information that a seller, vendor, or service provider commits in writing. Students, like all consumers, should obtain written representations in relation to any transaction in the marketplace that presents a significant financial commitment. Borrowers should understand the risks associated with making decisions based on verbal promises that an institution or any other entity in the marketplace is unable to substantiate or support in writing. Student advocacy groups, for instance, may help student become wise consumers on the front end, rather than successful borrower defense claimants after the fact.

Changes: None.

Borrower Defenses—Financial Harm

General

Comments: Many commenters supported the Department's definition of financial harm, noting that it clarifies what might be included and excluded, including the non-exhaustive list of examples. Some commenters noted that the definition appropriately addresses the longstanding legal principle that a victim's harm should be considered in determining a remedy. Other commenters supported the view that opportunity costs should not be included.

Several commenters cited protecting the financial interest of the taxpayer as an important goal when considering financial harm, especially if a borrower continued his or her enrollment after realizing that a misrepresentation occurred.

Some commenters believed that the requirement of proving financial harm beyond the debt incurred is ''arbitrary, unsupported, and not feasible.'' Others stated that the Department's proposed financial harm definition is burdensome to borrowers. Commenters suggested that the Department provide clear information, such as a checklist of examples of financial harm from those identified in the proposed rule, and ask borrowers to check all that apply, explaining the meaning of items in the list, and allowing borrowers to describe other examples of financial harm they have experienced. This commenter also suggested that the Department eliminate asking unnecessary questions and ask necessary questions in a way that does not deter borrowers from applying.

Other commenters claimed that requiring financial harm is inconsistent with the statute and the statutory intent, citing the statutory language of ''acts or omissions by an institution of higher education.''

Commenters stated that the requirement of financial harm will result in the denial of claims where a student acquired a loan on the basis of misrepresentations but did not suffer financial harm.

Discussion: The Department thanks the commenters for their support of these regulatory changes. The definition of financial harm should provide clarity and the list of examples should also further enhance the understanding of its meaning. The Department's list of examples of financial harm may be found at § 685.206(e)(4)(i) through (iv). The Department believes that borrower defense relief should relate to financial harm. The Department reminds commenters that these final regulations provide an administrative proceeding, and broader remedies are available to borrowers in other venues. The Department does not wish for its borrower defense to repayment process to supplant venues where borrowers may recover opportunity costs or other consequential or extraordinary damages.

Unlike courts, which may award the borrower more than the loan amount for opportunity costs or other consequential extraordinary damages, Section 455(h) of the HEA authorizes the Department to allow borrowers to assert ''a defense to repayment of a [Direct Loan],'' and to discharge outstanding amounts to be repaid on the loan. This section further provides that ''in no event may a borrower recover from the Secretary . . . an amount in excess of the amount the borrower has repaid on such loan.'' [84] Accordingly, it is improper for the Department to allow for extraordinary damages that likely will exceed the loan amount.

Even if financial harm continues after the filing of a claim, the Department may not provide to a borrower any amount in excess of the payments that the borrower has made on the loan to the Secretary as the holder of the Direct Loan. Although a borrower may be able to pursue such remedies through other avenues, under applicable statute, a borrower may not receive punitive damages or damages for inconvenience, aggravation, or pain and suffering as part of a borrower defense to repayment discharge. The 2016 final regulations similarly state that relief to the borrower may not include ''non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.'' [85]

[84] 20 U.S.C. 1087e(h).

[85] 34 CFR 685.222(i)(8).

Regarding the protection of taxpayer dollars, the Department believes that the financial harm standard is an important and necessary deterrent to unsubstantiated claims or those generally beyond the scope of borrower defense to repayment. Students may experience disappointments throughout their college experience and career, such as believing that they would have been better served by a different institution or major. However, such disappointments are not the institution or the taxpayer's responsibility.

Without the link between loan relief and harm, it is likely that many borrowers could point to a claim made by an institution about the potential a student could realize by enrolling at the institution. For example, institutions that advertise undergraduate research experiences typically do not guarantee that every student will have such an opportunity. Similarly, institutions that include the nicest dorm on campus as part of the college tour cannot guarantee that every student will have the opportunity to live in that dormitory. Institutions frequently feature graduates' top outcomes on their websites, but doing so does not suggest, or guarantee, that all students will have the same outcomes. Many factors beyond the control of the institution will influence outcomes.

Contrary to the commenter's statutory interpretation, the inclusion of financial harm in the calculation of a borrower's claim is a reasonable interpretation of a statute that is silent on the issue. The 2016 final regulations made clear the Department's position that, even if a misrepresentation was made by an institution, relief may not be appropriate if the borrower did not suffer harm. The Department stated in the 2016 final regulations that ''it is possible a borrower may be subject to a substantial misrepresentation, but because the education provided full or substantial value, no relief may be appropriate.'' [86]

Defense to repayment relief is not provided for a borrower who is disappointed by the college experience or subsequent career opportunities, or who wishes he or she had chosen a different career pathway or a different major. Instead, defense to repayment relief is limited to instances where a school's misrepresentation resulted in quantifiable financial harm to the borrower. If a misrepresentation associated with the making of a loan did not result in any such harm, it would not qualify as a basis for a defense to repayment under these final regulations.

The Department disagrees with commenters who believe that showing financial harm is overly burdensome. Although the process should be as simple as possible for borrowers, we need to balance that concern with the need to protect the interests of taxpayers. We believe that the examples of financial harm evidence should be within the ability of most applicants to show and should not substantially complicate the process of submitting a defense to repayment application.

Although the 2016 final regulations did not expressly include ''financial harm'' as part of a borrower defense to repayment claim, they tied relief to a concept of financial harm. Under the 2016 final regulations and specifically under Appendix A to subpart B of Part 685, a borrower would not be able to receive any relief if a school represents in its marketing materials that three of its undergraduate faculty members in a particular program have received the highest award in their field but failed to update the marketing materials to reflect the fact that the award-winning faculty had left the school. In such circumstances and under the 2016 final regulations, the Department notes: ''Although the borrower reasonably relied on a misrepresentation about the faculty in deciding to enroll at this school, she still received the value that she expected. Therefore, no relief is appropriate.'' [87]

Although the borrower had a successful borrower defense to repayment claim, the borrower did not receive any relief, which is a waste of the borrower's time and resources. To avoid such situations, financial harm will be an element of the borrower defense to repayment claim under the 2020 final regulations.

The borrower may always seek financial remedies from the institution through the courts or arbitration proceedings, but for the purpose of a defense to repayment claim, the Department's role is more narrowly limited to determining whether or not the student should retain the repayment obligation. This is why financial harm is a key element of a defense to repayment claim.

The Department appreciates the suggestions for development of a new form to be used as the result of these regulations and will formally seek such public input pursuant to the Paperwork Reduction Act information collection process.

Changes: None.

Factors for Assessing Financial Harm

Comments: Several commenters argued that the Department should not penalize schools for conditions out of their control including economic conditions, or a borrower voluntarily choosing not to accept a job, to pursue part-time work, or to work outside of the field for which he or she studied.

Several commenters indicated that it is important to balance the financial costs to institutions of borrower defense to repayment provisions with the need to establish an equitable recourse for students impacted by an institution's actions. They indicated that concern whether a school may close should not be a factor when determining whether a student has been harmed by fraud.

Some commenters contended that the Department should expand the definition of financial harm to include monetary losses predominantly due to local, regional, or national labor market conditions or underemployment which could otherwise be used by institutions to ''quibble with'' borrowers' applications.

Other commenters suggested revising the rule to state that ''Evidence of financial harm includes, *but is not limited to,* the following circumstances'' to clarify that the list is not exhaustive and that a borrower may raise other types of harm to establish eligibility for relief.

Commenters noted that it can be difficult to quantify harm and especially challenging to distinguish among degrees of harm. Some pointed out that the proposed rule would not account for opportunity costs and that harm continues even after filing a claim. Some suggested that if misrepresentation is substantiated and there is resultant harm, the Department should grant full relief unless the harm can be shown to be a limited or quantifiable nature.

Several commenters objected to requiring borrowers to demonstrate economic harm beyond taking out a loan. These commenters believe that obtaining the loan is enough to show they are financially harmed when the school committed a misrepresentation. One commenter suggested that part-time work is an indication of financial harm.

Discussion: The Department agrees that schools should not be penalized for conditions beyond their control and believes that the definition of financial harm adopted in these final regulations achieves that goal. The Department is revising the definition of financial harm to expressly state that the harm is the amount of monetary loss that a borrower incurs as a consequence of a

[86] 83 FR 75975.

[87] 34 CFR part 685, app. A.

misrepresentation. This definition further emphasizes that financial harm is an assessment of the amount of the loan that should be discharged. Borrowers also will have an opportunity to state in their borrower defense to repayment application the amount of financial harm allegedly caused by the school's misrepresentation. The borrower needs only to demonstrate the presence of financial harm to be eligible for relief under these final regulations,[88] and the Department will consider the borrower's alleged amount of financial harm as stated in the application.

Also, the Department believes that part-time work is not necessarily evidence of financial harm and, as a result, cannot be treated as such. A student may have very valid reasons for deciding to work part-time that are unrelated to any consequence suffered as a result of a misrepresentation.

For example, a student who is a parent may decide to work part-time to raise children, especially as daycare is costly. If a borrower decides to work part-time, even though full-time work is available to the borrower, then the part-time work is not evidence of financial harm. If only part-time work is available to a borrower due to an institution's misrepresentation and the borrower would like and is qualified for full-time work, then part-time work may constitute evidence of financial harm.

Where an institution has engaged in misrepresentation that results in financial harm to students, the final regulations the Department implements now will provide relief to students and seek funds from institutions without regard to the impact on the institution. At the same time, the final regulations are designed to protect against a systemic financial risk to institutions that are, in good faith, providing accurate information to students.

The Department does not propose to consider the impact on a school's financial condition when making a determination of misrepresentation. In the 2018 NPRM, the Department was making the point that it cannot assume that the student is always right, accusations against an institution are always true, or false claims against an institution do not have serious implications for institutions, students, and taxpayers.

The Department maintains, as we did in the 2018 NPRM and the 2016 final regulations, that partial student loan discharge is a possible outcome of a defense to repayment claim. Our reasoning for this approach is discussed further in the Borrower Defenses—Relief section of this preamble.

The Department continues to believe that, when choosing to pursue a particular career, students face a multitude of choices—where to live, where to attend school, when to attend school, and how quickly to graduate. Students are in the best position to make these decisions in light of their own circumstances. The Department believes that students must remain the primary decision-makers on the key points of how to navigate these difficult factors. Students should allege the amount of financial harm caused by the school's misrepresentation and not any financial harm incurred as a result of the student's own choices.

The Department does not wish to impose liability on institutions for outcomes that are dependent upon highly variable local and national labor market conditions, as these conditions are outside the control of the institution. The Department is willing to clarify the type of evidence that may demonstrate financial harm. Upon further consideration and in response to commenter's concerns, the Department revised the type of evidence that may demonstrate financial harm. The 2018 NPRM proposed: ''extended periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic downturns or recessions.'' [89] The Department realizes that the phrases, ''extended periods'' and ''economic downturns,'' are not defined and may be subject to different interpretations. Economists, however, have defined what constitute an ''economic recession.'' [90] Accordingly, the Department revised the phrase to ''periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions'' in § 685.206(e)(4)(i).

In response to the commenters' suggestions, the final regulations also have been revised to clarify that the list of examples is non-exhaustive. This rule provides a non-exhaustive list of examples of evidence of financial harm, meaning that borrowers are encouraged to provide evidence that they believe is instructive, and the Department will develop expertise in assessing financial harm based on this kind of evidence.

The Department is not including a specific methodology in this regulation for determining financial harm, in part, because the Department is awaiting a court ruling on at least one potential methodology developed to assess financial harm to borrowers.[91] The Department disagrees that it is unreasonable to require students to make their own assessment of financial harm, as they have the most information about their financial situation and circumstances. Indeed, it would be unreasonable to require the Department to assess financial harm without any input from the student as to what financial harm the student suffered. Students have the best records to assess and establish other costs associated with their education such as books, etc. Students will have the opportunity to provide whatever documentation they would like to provide to support their allegation of financial harm, and the Department will consider the student's submission. The Department also will take into account the amount of financial harm that the student alleges she or he suffered in determining the amount of relief to award for a successful borrower defense to repayment application. As described in the section on relief, below, the borrower's relief may exceed the financial harm alleged by the borrower but cannot exceed the amount of the loan and any associated costs and fees. The Department will consider the borrower's application, the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary in awarding relief.

The Department rejects, outright, the commenter's suggestion that taking out a loan is, on its own, evidence of financial harm. Under the 2016 final regulations, the Department acknowledged in example 5 in Appendix A to subpart B of part 685 that a borrower may take out a loan as a result of a misrepresentation of a school but will not be entitled to recover any relief. The Department now understands that it is a waste of both the borrower's time and resources as well as the Department's to acknowledge that the borrower has suffered from a misrepresentation but cannot recover any relief because there was no financial harm. Accordingly, financial harm is an element of a borrower defense to repayment claim in these final regulations. The financial harm must be a consequence of an institution's misrepresentation, for the reasons explained above.

[88] 83 FR 37259–60 (''As with the 2016 final regulations, however, the Department does not believe it is necessary for a borrower to demonstrate a specific level of financial harm, other than the presence of such harm, to be eligible for relief under the proposed standard.'')

[89] 83 FR 37327.

[90] *See, e.g.,* Miller, David S. (2019). ''Predicting Future Recessions,'' FEDS Notes. Washington: Board of Governors of the Federal Reserve System, May 6, 2019, *https://doi.org/10.17016/2380-7172.2338.*

[91] *Manriquez* v. *Devos,* No. 18–16375 (9th Cir. argued Fed. 8, 2019).

Changes: We thank the commenter for the suggestion about clarifying what evidence constitutes financial harm. As a result of that recommendation, we are revising the text of § 685.206(e)(4) to state that ''Evidence of financial harm includes, but is not limited to, the following circumstances.'' One of these examples is ''extended periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions,'' and the Department is revising ''extended periods of employment'' to ''periods of employment'' in § 685.206(e)(4)(i). Upon further consideration, the Department determined that ''periods of unemployment'' is clearer than ''extended periods of unemployment,'' as the period of time that constitutes an extended period is not specified. The Department also removed the phrase ''economic downturn'' in § 685.206(e)(4)(i), as the phrase ''economic recession'' provides greater clarity. The Department also revised § 685.206(e)(8)(v) to allow the borrower to state the amount of financial harm in the borrower defense to repayment application.

Submission and Analysis of Evidence

Comments: A number of commenters supported collecting information from the borrower, such as the specific regulations they are citing for their defense to repayment, outlining how much financial harm they think they suffered, and certifying the claim under penalty of perjury.

Some commenters contended that the evidence borrowers would need to satisfy proposed financial harm requirements would require sophisticated analysis, including the possibility of expert testimony from labor economists. Similarly, several commenters argued that it is challenging to identify when students' outcomes are predominantly due to external factors and recommended that the Department eliminate that from the definition of financial harm.

One commenter noted that borrowers may not know how to quantify the harm they have suffered as a result of the misrepresentation. Many commenters criticized the proposal to ask borrowers what the commenters cited as invasive and inappropriate questions about drug tests, full-time versus part-time work status, or disqualifications for a job. These commenters noted that these are subjective and impacted by many outside factors. Commenters were also concerned that this information could potentially get back to the school. Another commenter stated that the burden should fall on the school or the Department—but not the borrower—to prove that external factors did not cause the financial harm.

Discussion: The Department does not believe, and has not stated, that borrowers should be required to cite the specific regulation which they believe the institution violated, as a typical borrower would likely not have any knowledge of the relevant parts of Federal regulations.

The Department does not believe borrowers should be required to seek legal counsel in order to submit a defense to repayment claim.

Through these final regulations, the Department intends to create a borrower defense process that is accessible to typical borrowers and rests on evidence likely to be in their possession or the possession of the school. External factors such as labor market conditions can be assessed by the Department using available and reliable data. There is no need for borrowers to engage labor economists or expert witnesses. Borrower defense is an administrative determination based upon the best available information. The Department does not believe that the calculation of the borrower's financial harm should be discarded because of its potential complexity. For example, in many instances, the Department is being asked to evaluate whether job placement rates were misrepresented to students. Given that a TRP, as discussed earlier in the document, pointed to job placement determinations as highly subjective and imprecise, the Department has shown its willingness to engage in complicated and subjective determinations.

The Secretary will determine financial harm based upon individual earnings and circumstances; the Secretary may also consider evidence of program-level median or mean earnings in determining the amount of relief to which the borrower may be entitled, in addition to the evidence provided by the individual about that individual's earnings and circumstances, if appropriate. The Department must have some information relating to the borrower's career experience subsequent to enrollment at the institution. The goal is a proper resolution for each borrower defense claim, which requires evidence not only of an institution's alleged misrepresentations, but also of, among other factors, the borrower's subsequent career and earnings. While the Department has not taken this approach previously and continues to believe that for purpose of the previous standards, information relating to the individual's career experience may not be necessary to provide appropriate relief, the administrative difficulties the Department has faced in formulating an approach without such information has led the Department to conclude that such information will be required from borrowers for these final regulations. Without information about the individual's unique circumstances, including career experience, the Department has found it difficult to determine that a particular borrower actually suffered the financial harm necessary to be entitled to relief under the borrower defense statute. The Department is accordingly moving to an approach that requires individuals to provide such evidence. It is mitigating the burden of that approach, however, by requiring borrowers to provide necessary documentation of financial harm at the time of application. In addition, the Department believes that other reforms in these regulations, including the new Federal borrower defense standard, mitigate the burdens of this approach.

In response to the many commenters strongly opposed to the Department asking borrowers for information such as employment status, employment history, or other disqualifications for employment, we believe these factors, while potentially subjective and impacted by outside forces, provide important context when determining the proper extent to which an institution caused financial harm or how much relief is warranted based on the actions of the institution. These questions are not intended, in any way, to shame borrowers, and we will maintain the borrower's privacy, as required by applicable laws and regulations. Through this regulatory provision, the Department is attempting to confirm that any financial harm results from actions of the school and not the disposition, actions, or non-education related decisions made by the borrower. Despite the commenter's suggestions, the Department continues to believe that the borrower is in the best position to know certain information and that the burden on the borrower to submit a signed statement containing information they know is appropriate.

In response to the suggestion that the burden for certain elements of a borrower defense claim should fall on the school or the Department, the process outlined is for both the borrower and school to provide the information needed for correct resolution. The process is meant to be accessible to unrepresented borrowers, and it will not rely on formal notions of burden shifting.

The Department acknowledges that it is difficult to precisely quantify

financial harm. We believe that the information requested by the Department from borrowers and schools will provide a factual basis for the Department to determine the extent of financial harm.

Changes: None.

Equitable Resolution of Claims

Comments: Commenters indicated that common law principles of equity must apply and, as a result, the proposed definition of financial harm must be rejected. According to the commenters, the common law principle of equity requires that victims of fraud be made whole.

These commenters stated that the Department is conflating harm and levels of harm based on a student's individual earning ability. The commenters explained that this analysis misuses the cause and effect of fraud upon a student's earning potential. A student's individual earning capacity is based upon that student's circumstances and one student's wages should not be used in comparison to another student. The commenters argued that the standard being used is unfair when, in an entire program that only results in graduates having wages below the Federal poverty line, a student that is making more than the Federal poverty line would receive only partial discharge, if any, because that student may be doing marginally better than his or her fellow graduates.

The only harm that can be measured consistently according to these commenters is the amount of student loan debt as it is not based on individual student circumstances, improper cause and effect analysis on earning potential, and accounting for an entire population of graduates that has poor outcomes.

Discussion: The Department appreciates the commenters' concerns, but we emphasize that the defense to repayment regulation is not meant to replace the courts in rendering decisions about consumer fraud. Instead, it seeks to provide students with relief from loan repayment obligations when an institution's misrepresentations, as defined at § 685.206(e)(3), cause a student financial harm.

The importance of harm resulting from the institution's acts or omissions was a critical part of the 2016 final regulations [92] and remains a critical part of these final regulations, so that the financial risk to borrowers, institutions, and taxpayers is properly and fairly balanced. Were the Department to eliminate the need for a borrower to demonstrate harm, institutions may be more reluctant to provide information to prospective students, which could make it harder, rather than easier, for a student to select the right institution for them.

In order to assess whether a borrower is being appropriately compensated in a successful claim, the Department must assess his or her financial harm in context, and that context may consider earnings relative to peers, market wages, cost of living, and other factors.

The Department disagrees that the only measure of harm that should be used is the amount of the student's loan debt. As discussed above, the Department believes that financial harm is implied in the statutory authority and necessary to the resolution of borrower claims. We believe the definition of financial harm provides such balance to all parties involved. If the borrower received an educational opportunity reasonably consistent with that promised by the institution from the institution, then the borrower should not be relieved of his or her repayment obligations, even if some of the information provided to the student in advance had inadvertent errors.

Changes: None.

Borrower Defenses—Limitations Period for Filing a Borrower Defense Claim

Comments: Many commenters supported the Department's proposal to limit claims to three years from the date the borrower completes his or her education. Commenters thought a three-year limitation would be fair, because: Evidence will still be available; recollections of the parties will be relatively clearer; and most borrowers should know that they have been wronged within three years. Many commenters argued that after three years, it becomes much harder for schools to defend themselves against claims, particularly since schools are discouraged by regulators from keeping records for longer than three to five years due to security and privacy concerns.

Some commenters believe that a three-year limitations period should relate to defensive claims as well as affirmative claims, arguing that three years is enough time for a borrower to file a claim and that schools should not be expected to defend themselves against a claim made many years after the student left school.

A commenter noted that one way to address this concern would be to allow borrowers to file defensive claims at any time, but only hold the school liable for five years. One commenter maintained that a three-year period instead of a five-year period for the Department to seek recovery against an institution would balance the Department's interest in recovering from institutions against the institutions' reasonable ability to predict and control their financial situation.

Another commenter suggested that a borrower should not be able to raise a claim if the borrower has been in default for more than three months.

Other commenters argued that the proposed timeline does not provide enough time for borrowers to realize that they have been harmed, learn about the claim process, gather supporting evidence, and file a claim. Those commenters noted that disadvantaged borrowers may not understand their right to seek relief, may not possess the evidence needed, or may not be made aware that they were misled until much later.

Some commenters argued that the Department cannot legally preclude borrowers from defending against a demand for repayment. Multiple commenters indicated that since there is no limitations period on repayment, there should be no limitations period on defenses. Some commenters opposed adding any limitation, arguing that a limitation would likely keep the most disadvantaged borrowers from receiving relief. One commenter noted that imposing a limitations period on borrower defense claims would be contrary to well-established law and inconsistent with the Department's practice with respect to other discharge programs. The commenter further argued that such a limitation would indiscriminately deny meritorious and frivolous claims alike.

One commenter argued that because there is no requirement that the student be made aware of their eligibility to file a borrower defense claim during the statute of limitations, the opportunity to file a claim is rendered ''effectively moot.''

Commenters argued that the limitations period, whatever its length, should run from discovery of the harm or misrepresentation rather than running from the date the student is no longer enrolled at the institution.

Another commenter noted that the most frequent statute of limitations for civil suits involving fraud is six years from the act.

Several commenters raised concerns that the Department was taking punitive measures against borrowers by requiring them to raise a borrower defense to repayment claim within the applicable

[92] Example 5 in Appendix A to subpart B of part 685 demonstrates that a borrower would not receive relief from the Department unless there was financial harm.

timeframes set for a proceeding to collect on a loan, which could result in a short effective limitation period of 30–65 days depending upon the proceeding. The commenter suggested instead to use ''positive incentives'' to encourage borrowers to file claims.

Discussion: The Department appreciates the support for our limitations period proposal in the 2018 NPRM. However, after careful consideration of the comments, the Department has decided to revise the limitation period, as stated in the 2018 NPRM, in these final regulations.

The Department was persuaded by the commenter who proposed that a three-year limitations period be put in place for both affirmative and defensive borrower defense claims. The commenter pointed out that, under the 2018 NPRM, a borrower who went into default nearly twenty years after graduation could, potentially, assert a defensive claim at that time. It is very unlikely that an institution would still possess the records needed to defend against such a claim at that time. In fact, it would be ill-advised and very difficult for institutions to maintain records for that entire period, especially when considering privacy, as well as physical and digital storage considerations. It is equally unlikely that faculty or staff would still be employed at the same school or be able to recall the incident(s) subject to the claim.

Therefore, the Department now believes that a three-year period for the filing of affirmative and defensive claims with the Department, commencing from the date when the borrower is no longer enrolled at the school, is fair to both the borrower and the institution and strikes the right balance between providing obtainable relief for borrowers and allowing institutions to predict and control their financial conditions.

The final regulations would also entirely avoid the consequence of a short limitations period—30–65 days—that many commenters thought borrowers would find difficult to satisfy. The Department understands the commenter's concerns that the timeline proposed for the filing of defensive claims in the 2018 NPRM was insufficient, but we disagree with the commenter who suggested that this was a punitive measure. On the other hand, we do agree that the Department should, within certain limits, create incentives to borrowers to file meritorious claims in a timely manner. As a result, the Department will not be implementing the filing deadlines for the various proceedings in which a defense borrower defense claim may be raised, including: Tax Refund Offset proceedings (65 days); Salary Offset proceedings for Federal employees under 34 CFR part 31 (65 days); Wage Garnishment proceedings under section 488A of the HEA (30 days); and Consumer Reporting proceedings under 31 U.S.C. 3711(f) (30 days). These short limitations periods are no longer necessary given the change in the final regulations regarding the three-year limitations period for the filing of all claims, including defensive claims arising as a result of a collections proceeding.

Notwithstanding anything in these final regulations, borrowers may continue to maintain other legal rights that they may have in collection proceedings. No provision in these final regulations burdens a student's ability to seek relief outside the Department's borrower defense claim process. Subject to applicable law, borrowers are not deprived of a defense to, nor precluded from defending against, a collection action for as long as the debt can be collected.

The Department is not persuaded by the commenter's suggestion that schools should be limited to five years of liability in a defensive borrower defense claim or that the Department should waive the time limit to file a claim entirely. The three-year limitations period strikes the proper balance for records retention, the parties' recollection of the events, and documentation requirements. Similarly, waiving the time limit could potentially generate massive liabilities for schools, which could create undesirable incentives for schools and negatively impact their long-term financial stability.

We considered the commenter's suggestion to begin the limitation period at the discovery of harm. The Department recognizes that this standard can be found in other bodies of law. However, we have concluded that this suggestion would not be appropriate for an administrative proceeding like the adjudication of a borrower defense claim. Determining whether and when a borrower discovered or should have discovered the misrepresentation is a difficult task that is administratively burdensome. Such a determination is very subjective. Such a determination also requires the Department to consider evidence that likely will not be part of the borrower defense to repayment application or readily available to the borrower or the institution, especially if much time has passed between enrollment and the discovery of the misrepresentation.

The Department notes that while the limitations period begins at graduation, the institution's misrepresentation was likely committed before the borrower enrolled. Taking into account the period of the borrower's enrollment—whether two, three, or four years—the effective limitations period is between five and seven years. Consequently, the limitations period is comparable to State statute of limitations periods for civil fraud. For example, New York state law requires that a fraud-based action must be commenced within six years of the fraud or within two years from the time the plaintiff discovered the fraud or could have discovered it with reasonable diligence.[93]

Further, when compared to a civil proceeding in a court of law, the Department does not possess the court's ability to compel parties to produce documents, call witnesses to produce testimony, or hold formal cross-examination. Therefore, the Department is limited in our ability to judge claims. As a result, the opportunities afforded to civil litigants are not all appropriately applied here. The Department has decided to seek a balance between the need for students who are eligible for relief to obtain it and to allow schools to be exposed to unlimited liability. The Department also notes here, as elsewhere, that nothing in these final regulations burdens a student's ability to seek relief outside the borrower defense claim process.

Throughout these final regulations, the Department has emphasized the need for students to be engaged and informed consumers when making determinations about their education choices. We disagree with the commenter who stated that without notification, presumably from the Department, of the borrower's eligibility to file a claim, the opportunity to file a claim is ''effectively moot.'' We believe borrowers are able to inform themselves of their options, if they feel they have been harmed by an institution's misrepresentation.

The three-year limitations period should be considered in the context that the period is not tied to the date of the act or omission, but rather from the date of that the borrower is no longer enrolled in the institution. For the many borrowers who enroll in multi-year programs, the Department's limitations period will be, in actual practice, longer than even a five- or six-year limitations period that begins to run from the time of the alleged wrong.

[93] *Sargiss* v. *Magarelli,* 12 NY3d 527, 532 (2009), quoting CPLR 213 [8] and CLPR 203 [g].

As discussed in the 2018 NPRM, the Department believes that giving consideration to all comments received and on current records retention policies, which was not the subject of this rulemaking, that three years after the date of the end of their enrollment is sufficient and appropriate. Therefore, we believe these final regulations provide sufficient time for borrowers to become aware of the borrower defense process, gather evidence, and file a claim.

The Department does not believe that, for loans first disbursed on or after July 1, 2020, it would be beneficial for students or schools to be subjected to different limitations periods depending upon the rules of individual States or accreditors. The Department notes that statutes of limitations for civil suits involving fraud vary between States and jurisdictions. For example, the statute of limitations for civil fraud in Louisiana is one year;[94] three years in California;[95] four years in Texas;[96] and five years in Kentucky.[97] Such a policy leads to inconsistent treatment of borrowers and confusion for schools that may be subject to different rules by their States and accreditors. The Department does not adopt the commenter's proposal to bar a borrower, who has been in default for more than three months, from raising a borrower defense claim. Unfortunately, the commenter did not add any justification for the Department to consider when raising this consideration. Even so, in an effort to treat all borrowers equally and fairly, we believe that every borrower, regardless of payment or non-payment status, continues to possess the ability to file a borrower defense claim within the limitations period.

The Department disagrees that creating a limitations period on filing affirmative claims is ''contrary to well-established law'' and inconsistent with past practice. In fact, in the past, the Department has, unwisely, embraced incongruous and inconsistent limitations periods for borrower defense claims. For loans first disbursed on or after July 1, 2017, the 2016 final regulations allowed for affirmative claims based upon judgments against the school to be filed at any time, while breaches of contract and substantial misrepresentations were limited to ''not later than six years.''[98] Despite our concerns regarding these multi-tiered limitation periods, as a matter of policy, the Department has decided to continue these inconsistencies until July 1, 2020 due to retroactivity concerns. However, the Department looks forward to a consistent application of a standard limitations period for loans first disbursed on or after July 1, 2020.

Changes: For loans first disbursed on or after July 1, 2020, the Department has established a three-year limitations period to apply to both affirmative and defensive borrower defense claims at § 685.206(e)(6).

Borrower Defenses—Records Retention for Borrower Defense Claims

Comments: Some commenters supported different timeframes, including four years, six years, or the record retention timeframes used by States and accreditors. Conversely, some commenters argued for shorter time-frames such as one or two years. Other commenters argued that keeping records for longer than three years raises privacy concerns.

One commenter noted that basing the three-year proposed timeframe on the Federal records retention requirement does not take into consideration that accrediting agencies require much longer retention of records and that Federal records likely would not be relevant for these claims. Another commenter indicated that the Federal records retention requirement is a minimum retention requirement and that institutions may hold records for longer periods. A number of commenters requested that a records retention requirement align with other Department records retention policies.

Discussion: The Department thanks the commenters for pointing out the plethora of records retention statutes that institutions, especially those with a presence in multiple States, are subject to as well as the added complexity of accreditor records retention requirements.

As discussed in the previous section, we believe that the three-year requirement provides ample opportunity for borrowers to make a claim as well as consistency with other Department requirements for institutions. As stated above, the Department continues to assert that the three-year limitations period will provide a fair opportunity for borrowers to file claims and a fair standard for institutions who retain thousands of pages of records. This three-year limitation period will also provide greater certainty to schools and taxpayers, protect student privacy, and ensure that borrower defense matters are processed on the basis of relatively fresh recollections and with records still available.

Changes: None.

Borrower Defenses—Exclusions

Comments: Many commenters supported the Department's non-exhaustive list of exclusions of what constitutes grounds for filing a borrower defense to repayment claim. These commenters noted that it was helpful to explain that certain areas would not be considered as the basis for a borrower defense to repayment claim.

Some of these commenters further noted that they appreciated the Department citing factors it would not consider.

Discussion: We appreciate commenters' support in outlining examples of exclusions of what would not constitute the basis for a borrower defense to repayment claim under these final regulations.

Changes: None

Comments: None.

Discussion: As discussed above, the Department removed the phrase ''that directly and clearly relates to the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan''[99] from the definition of misrepresentation to better align this definition with the Federal Standard. Both the Federal standard and the definition of misrepresentation refer to a misrepresentation of material fact ''that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made.''[100]

To align the language in the exclusions section with the Federal standard and the definition of misrepresentation, the Department is removing the phrase ''a claim that is not directly and clearly related to the making of the loan and provision of educational services by the school'' and replacing it with the phrase ''a claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made.'' This revision provides consistency and clarity with respect to the Federal standard, definition of misrepresentation, and exclusions section.

Changes: The exclusions apply to a claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made instead of to

[94] La. Civ. Code art. 3492.

[95] Cal. Civ. Proc. Code § 338 (2006).

[96] Tx. Civ. Prac. & Rem. § 16.001(a)(4).

[97] Ky. Rev. Stat. § 413.120(11) (2016).

[98] 34 CFR 685.222(b)–(d).

[99] 83 FR 37326.

[100] *Compare* § 685.206(e)(2) *with* § 685.206(e)(3).

a claim that is not directly and clearly related to the making of the loan or the provision of educational services by the school. This revision aligns the exclusions section with the Federal standard and definition of misrepresentation.

Borrower Defenses—Adjudication Process (§§ 685.206 and 685.212)

General

Comments: Many commenters wrote in support of the proposed adjudication process. They noted that the process is clear and provides due process for all parties. These commenters also assert that as compared with the process in the 2016 final regulations, the proposed process strikes a fairer balance between individual responsibility and school accountability.

Discussion: We appreciate the support of these commenters. For the reasons described earlier in this document, we agree that our final rule strikes the right balance.

Changes: We are adopting, with changes for organization and consistency, Alternative B for paragraphs (d)(5) Introductory Text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020.

Process

Comments: Many commenters expressed support for the proposed process providing an opportunity for schools to respond and provide evidence when notified of a borrower defense to repayment claim. One commenter who supported the proposed process noted that it would provide a clear process for both parties and, thus, enable the Department an opportunity to render a fair decision, hold appropriate parties accountable, and greatly reduce abuse of the loan discharge provision.

One commenter expressed concern that the Department may require additional information about the borrower's personal employment history that is irrelevant to the allegations against a school. This commenter further asserts that racism impacts the ability to find employment, causing borrowers of color to appear less deserving of relief.

Another commenter recommended that the Department employ an initial review of a borrower's discharge application to determine whether there is probable cause or jurisdiction to continue the investigation. The commenter recommended that, if there is insufficient information provided by the student or there is no jurisdiction, a form letter be sent to the borrower on the determination that the application has been closed with no further action by the Department. The borrower may then file a new application that meets the Department's standards. The commenter also recommended that the regulation be consistent and align with Federal regulations under 34 CFR 685.206 and 668.71.

Some commenters suggested that the Department adopt a principle from civil litigation that pleadings from parties who are not represented by an attorney be liberally construed. These commenters recommend that the Department liberally construe applications from borrowers who are not represented by an attorney.

Another commenter asserted that requiring written submissions in government proceedings can be an undue burden. This commenter asserts that the Supreme Court of the United States recognized the burden of requiring written submissions in *Goldberg* v. *Kelley,*[101] and the Department should recognize this burden and revise its process. This commenter further noted that the lack of relief in the past may lead low-income borrowers to believe that it is not worth paying attention to the Department's notices.

Discussion: The Department appreciates support from commenters for our revised process. We agree that these regulations create a more balanced and fair process. The 2016 final regulations only expressly gave institutions the opportunity to meaningfully respond pursuant to the group claims process, assuming the institution was not closed.[102] The revised process affords institutions the opportunity to respond to allegations against the institution during the adjudication process for the borrower's claim. These regulations reduce the likelihood that the Department and schools will be burdened by unjustified claims or that taxpayers will bear the cost of wrongly discharged loans.

The Department will only request information that is or may be relevant to the defenses that the borrower asserts. As the Department stated in the 2016 final regulations, the kind of evidence that may satisfy a borrower's burden will necessarily depend on the facts and circumstances of each case.[103]

The Department does not have sufficient resources to perform a preliminary review of all claims to assess jurisdiction or sufficiency of information prior to performing a full review, and such a preliminary review would unnecessarily divert resources from the timely review of other claims. Creating such a preliminary review also would result in giving borrowers numerous attempts to file a satisfactory application, which could result in additional burden and backlog for the Department's processing of claims and a delay in awarding relief to borrowers in a timely manner. The borrower is required to submit a completed application, which the Department will review during the regular adjudication process. Incomplete applications will not be accepted, and borrowers will be notified when the Department is unable to process an incomplete application. Borrowers may submit another, completed borrower defense to repayment application within the limitations period. Borrowers must submit a completed application to receive Federal student aid and also must submit a completed borrower defense to repayment application to receive relief.

The Department revised § 685.206(e)(11)(ii) to clarify that the Department will not issue a written decision, which is final and not subject to further appeal, if the Department receives an incomplete application. Instead, the Department will return the application to the borrower and notify the borrower that the application is incomplete. The Department, however, is not precluded, when directed by the Secretary, from requesting more information from the borrower or the school with respect to the borrower defense to repayment process.

The Department is cognizant of how these final regulations will align with other Federal regulations. The definition of misrepresentation, at 34 CFR 685.206(e)(3), for the borrower's defense to repayment application is purposefully different than the definition of substantial misrepresentation in 34 CFR 668.71(c) for initiating a proceeding or other measures against the institution. The different definitions of misrepresentation allow the Department to act in a financially responsible manner to protect taxpayers. The Department will discharge a loan, in whole or in part, when a borrower demonstrates by a preponderance of the evidence a misrepresentation pursuant to 34 CFR 685.206(e)(3) and financial harm to the borrower; this provision relates to loan forgiveness for borrowers. The Department will exercise its enforcement authority against institutions pursuant to the 34 CFR 668.71(c); this provision relates to the

[101] 397 U.S. 254 (1970).

[102] 34 CFR 685.222.

[103] 81 FR 75962.

Department's enforcement authority against schools.

As explained in more detail above, the definition of misrepresentation for Department enforcement actions is broader than the definition of misrepresentation for borrower defense to repayment claims because as the latter underpins, in part, the Department's authority to recover liabilities, guard the Federal purse, and protect Federal taxpayers.

Liberally construing pleadings of persons who are not represented by an attorney is appropriate in a court and is required pursuant to rules governing judicial proceedings. The Department is not a court of law and is not conducting a judicial proceeding that requires an attorney. The Department intends to provide instructions that are easy to understand and does not expect borrowers to provide legal arguments. The Department need not liberally construe applications filed by unrepresented borrowers, as doing so supposes that they are less capable of completing an application, which the Department does not believe is the case, however we will use our discretion and expertise, when necessary, to determine the merits of a borrower defense to repayment claims.

In *Goldberg* v. *Kelley,* the Supreme Court considered whether a State may terminate public assistance payments to a particular recipient without affording the recipient the opportunity for an evidentiary hearing prior to the termination.[104] The Supreme Court stated that the ''opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.'' [105]

Here, we are describing a process afforded to an individual who had the opportunity to engage in higher education, meaning their written submissions are appropriate for students who have been admitted to institutions of higher education as well as the institutions that they attended. Such individuals will have received secondary education or the equivalent of such education. With respect to Parent PLUS loans, parents who are borrowers have experience in applying for Federal student aid or other loans and in making other financial decisions. Requiring written submissions should not be a substantial burden on borrowers or institutions and allows the Department to easily keep a record of each party's evidence and arguments. A written record also is helpful to borrowers or institutions who may wish to later challenge the Department's determination in court proceedings.

Unlike the 2016 final regulations, these final regulations require the Department to consider the borrower's application and all applicable evidence. The borrower will receive a copy of all applicable evidence and, thus, will know what evidence the Department relied upon in making its determination.

The Department encourages all borrowers to read and pay careful attention to the Department's notices. The Department will continue to issue such notices and will strive to make notices easy to understand and accessible to all borrowers.

Changes: We are adopting, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) of the 2018 NPRM for loans first disbursed on or after July 1, 2020.

The Department is revising § 685.206(e)(11)(ii) to clarify that if the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in 685.206(e)(6) or (e)(7), it will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

Comments: Some commenters recommended that the Department revise the process to consider applications for borrower defense to repayment when the Department is already in possession of documents and evidence relevant to the claim.

Other commenters noted that the proposed rule indicated that if the Secretary uses evidence in his or her possession, the school will be able to review and respond to such evidence, but that borrowers are not afforded the same opportunity. The commenters request that both parties to the claim be provided an opportunity to review and respond to all evidence under consideration in the determination of the claim. One of these commenters noted that under some States' processes, schools and borrowers have the opportunity to provide evidence and arguments and to respond to each other's submissions.

Other commenters expressed concern that the Department provides schools, but not borrowers, an opportunity to respond to evidence at the point in the process where the Department is determining whether to discharge the borrower's loan.

Discussion: The Department agrees with the commenters who recommended that the Department may consider evidence otherwise in the possession of the Secretary and adopts, with changes for organization and consistency, the approach in Alternative B for § 685.206(d)(5) introductory text and (d)(5)(i) and (ii)(Affirmative and Defensive) of the 2018 NPRM.[106]

The Department also agrees with commenters that, subject to any applicable privacy laws, both the borrower and the institution should be able to review the evidence in possession of the Secretary that will be considered in the evaluation of the claim. The Department values transparency and would like both the borrower and the institution to have the opportunity to review evidence in possession of the Secretary and to respond to such evidence. Accordingly, the Department is revising the regulatory language to expressly state that if the Secretary considers evidence otherwise in her possession, then both the borrower and the institution may review and respond to that evidence and submit additional evidence.

The Department acknowledges the concern that the borrower should have an opportunity to review and respond to the school's submission. The Department stated in its 2018 NPRM that ''the borrower and the school will each be afforded an opportunity to see and respond to evidence provided by the other.'' [107] Accordingly, the Department is revising the final rule to provide that a borrower has the opportunity to review the school's submission and to respond to issues raised in that submission.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) of the 2018 NPRM for loans first disbursed on or after July 1, 2020, and revises § 685.206(e)(9) to expressly state that the Secretary may consider evidence in his or her possession provided that the Secretary permits the borrower and the institution to review and respond to this evidence and to submit additional evidence. The Department also will revise § 685.206(e)(10) to provide that a borrower will have the opportunity to review a school's submission and to respond to issues raised in that submission. We also make a conforming change in § 685.206(e)(11), to state that the Secretary issues a written decision after considering ''all applicable evidence'' as opposed to specifying that

[104] *Goldberg,* 397 U.S. at 255.

[105] *Id.* at 268–69.

[106] 83 FR 37326.

[107] 83 FR 37262.

such evidence would come from the borrower and the school.

Internal or Voluntary Resolution With School

Comments: One commenter suggested that borrowers should be required to bring their claims to the school first and provide the school with an opportunity to clearly explain accountability and legal consequences to the borrower if the accusation is proven to be false or unfounded.

Another commenter who suggested we consider a Resolution Agreement process similar to that used within the Department's Office for Civil Rights when considering borrower defense claims. The commenter suggested that this would reduce the burden on the Department's resources by allowing borrowers and schools to more quickly resolve the dispute and loan obligations prior to the Department's adjudication process. Another commenter suggested adding a period of time during which the borrower and school may meet to voluntarily resolve any dispute short of commencing with a filed claim.

A group of commenters recommended a new provision that would require borrowers seeking to file an affirmative claim to first inform the school of their concern and give the school time to resolve the matter.

One commenter suggested that, if a school is deficient, the borrower should sue the school to recover the money to repay his student loans.

Discussion: The Department encourages institutions to provide an internal dispute resolution process to resolve a borrower's claims, including affirmative claims, before the borrower files the claim with the Department. The benefits of such a process included that the borrower could seek relief for cash payments, private loans, and 529 plans used to pay tuition. In such a case, should the institution determine that it should repay some or all of a borrower's loans, these payments will not be considered as a defaulted loan. The Department, however, will not require the borrower to go through the institution's internal dispute resolution process prior to filing an application with the Department. The borrower retains options to resolve a claim, such as a traditional court proceeding, arbitration proceeding, or State-level administrative process, and the Department does not wish to limit the borrower's ability to choose the best process for them. Likewise, the Department also does not wish to impose any requirement as to which process the borrower must go through first. Borrowers are best suited to determine which process will be most beneficial in their personal circumstances and will benefit from having options.

For reasons of administrative burden and resource allocation, we do not believe it is necessary to include an early dispute resolution process in these final regulations, whereby the Department or another party would mediate borrower defense disputes between a borrower and the school, to attempt to resolve the disputes without the need for the parties to go through the Department's full borrower defense adjudication process.

These final regulations do not prevent a borrower from engaging in other, existing dispute resolution processes to resolve any claim with an institution prior to filing an application with the Department. A borrower and institution also may choose to resolve a claim after the borrower files an application with the Department. The borrower may voluntarily withdraw his or her application with the Department if the borrower resolves a claim with the institution.

Institutions may disclose any internal dispute resolution process available to borrowers and explain the benefits of any such process. Institutions also may disclose the consequences of making a false or fraudulent allegation in the school's internal dispute resolution process. The institution, however, should not present the consequences of making a false or fraudulent allegation with the intent to prevent, or in a manner that prevents, a borrower from filing a borrower defense to repayment application with the Department.

The Department does not prohibit a borrower from filing or require a borrower to file a lawsuit against an institution. Borrowers may utilize any process available to them.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) of the 2018 NPRM for loans first disbursed on or after July 1, 2020.

Role of the School in the Adjudication Process

Comments: Some commenters expressed concern that the proposed regulation involves schools in a manner that privileges schools with respect to the adjudicatory process with no gesture towards fairness or balance for the borrowers.

One commenter recommended the Department limit the schools' roles in the process to avoid overrepresentation of institutional interests to the detriment of harmed borrowers. The commenter noted that borrowers are at a distinct disadvantage, stating that while the school maintains records on the student's time at the school, the school's disclosures to that and other prospective or enrolled students, and hundreds or thousands of other data points, the student is largely reliant on his own testimony—and largely dependent on the Department and other fact-finding agencies to seriously investigate any claims. The commenter urges the Department to be cautious to protect the borrower from undue pressure by the school.

Another commenter urged the Department to make changes to ensure the process is accessible and equitable to borrowers unrepresented by an attorney, since the proposed process, in the commenter's view, stacks unrepresented borrowers against represented schools, does not allow borrowers to re-apply based on evidence not previously considered, and will necessitate that borrowers seek guidance as to what to include in their applications. Some commenters expressed concern that providing documentation associated with a defense to repayment claim to a school provides opportunities for schools to retaliate against a borrower for filing a claim. The commenters suggested that any act of retaliation should be viewed as evidence to support the approval of a defense to repayment claim.

Discussion: The Department believes that its adjudicatory process fairly balances the interests of institutions and students. The Department's revisions to the proposed regulations allow both the borrower and the school the opportunity to see and respond to evidence provided by the other. The revisions further allow both the borrower and the school to see and respond to evidence otherwise in the possession of the Secretary that the Secretary considers in the adjudication of the claim. Such a process provides both borrowers and schools with due process protections.

It is critical that schools be provided an opportunity to respond to claims made against them so that the Department can adjudicate claims based on a complete record. It is incumbent upon the borrower to provide evidence to the Secretary to establish by a preponderance of the evidence that the school made an act or omission that qualifies as a basis for borrower defense to repayment relief, and it is reasonable to provide a school with the opportunity to respond to such claims. Additionally, if institutions have unknowingly made a misrepresentation or have an employee who has made

misrepresentations, the Department's notice to the institution of the borrower's claim may help the institution implement corrective action more quickly to ensure that other students are not impacted.

The Department disagrees that students are largely reliant on their own testimony to file a defense to repayment claim. The Department urges students to make informed consumer decisions and treats students as empowered consumers. While students should request important information that is relevant to their enrollment decision in writing, institutional misconduct is never excusable.

The Department intends to publish instructions for submitting a borrower defense application that will explain the process and provide other relevant information to help borrowers successfully complete the application.

The Department acknowledges that institutions are more likely than students to have access to paid legal counsel, but a student will not need paid legal counsel to submit a borrower defense to repayment application. Institutions almost always are more likely than students to have access to paid legal counsel, but students do not need an attorney to file a claim with the Department's Office for Civil Rights and similarly will not need an attorney to submit a borrower defense to repayment application. Of course, students may seek help from legal aid clinics or take advantage of services from numerous student advocacy groups in submitting a borrower defense to repayment application. Additionally, institutions do not need to employ counsel to respond to a borrower's application and may choose to have staff—for example, staff in their Financial Student Aid office or admissions office—submit a response to the Department. Moreover, by adopting a preponderance of the evidence standard, the Department believes that a student should reasonably and more easily be able to satisfy that standard.

To address concerns that a student may have discovered evidence relevant to a borrower defense to repayment claim through a lawsuit or an arbitration proceeding, the Department revised section 685.206(e)(7) to state that the Secretary may extend the three-year limitations period when a borrower may assert a defense to repayment under section 685.206(e)(6) or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered in the exceptional circumstance when there is a final, non-default judgment on the merits by a State or Federal Court that establishes that the institution made a misrepresentation, as defined in § 685.206(e)(3), or a final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in § 685.206(e)(3). In this exceptional circumstance, the Secretary may extend the time period when a borrower may assert a defense to repayment or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered.

The Department agrees that students should not suffer retaliatory acts by institutions that have been accused of misrepresentation, and the Department does not tolerate retaliation. The Department may consider evidence of any retaliatory acts by the institution in evaluating the borrower's application. The borrower may submit evidence of any such retaliatory acts to the Department. The Department is revising the proposed regulations to allow the borrower to file a reply to address the issues and evidence raised in the school's submission as well as any evidence otherwise in the possession of the Secretary that the Department will consider. The borrower's reply will be the final submission, and the final regulations do not provide the school with the opportunity to file a sur-reply. In this sense, the student will have the final word and may report any retaliatory acts to the Department. The Department also is not listing the types of information that the school may receive in these final regulations as proposed in the 2018 NPRM. The school will still receive the student's application as well as any evidence otherwise in the possession of the Secretary and used to adjudicate a borrower defense claim, but the language listing the information the school will receive is unnecessary. These revisions provide a more equitable balance and address the commenters' concerns.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020. As noted above, the Department revised § 685.206(e)(7) to provide that the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e) or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered in two exceptional circumstances. The borrower may now file a reply that addresses the issues and evidence raised in the school's submission as well as any evidence otherwise in possession of the Secretary. Additionally, the Department will no longer list the types of information that the school may receive as proposed in § 685.206(d)(8)(i) because the final regulations expressly state the information the school will receive in § 685.206(e)(10).

Timelines

Comments: Several commenters requested the Department include specific timeframes within which various steps of the adjudication process would occur. Many commenters recommended a 45-day interval for a school to respond to a borrower's claim, a 30-day interval for the borrower to reply to the school's initial response, and an additional 15-day interval for the school to submit any new evidence as a result of the borrower's reply. Other commenters proposed different timeframes for a school's response, a borrower's reply, and/or the resolution of the claim.

Other commenters noted that the proposed process changes are described by the Department as a means to reduce the time required to review claims because it would discourage frivolous claims. The commenters note that most of the currently pending claims are supported by evidence in the Department's possession. They further assert that the proposed process requires a review of voluminous paperwork prepared by counsel for the school, which is likely to slow rather than expedite the adjudication process.

Some commenters who supported the proposed process expressed concern that the regulation did not include specific information regarding how final determinations would be made or timeframes for the adjudication of claims.

Discussion: The Department appreciates the recommendations made by commenters but does not believe that the proposed time limits would be appropriate in certain circumstances. For instance, the Department most likely could not adhere to the proposed time limits if a large number of defense to repayment claims were submitted to the Department simultaneously, which could be the case if an outside entity organized a particular group of students to submit claims *en masse.*

The Department agrees that it is reasonable to prescribe a timeframe for an institution's response and the borrower's reply and intends to do so in the instructions for the defense to repayment application and the notice to the institution. In response to these

comments, the Department revised § 685.206(e)(16)(ii) to specify that the Department will notify the school of the defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application. This revision makes clear that the school will receive the borrower's application in a timely manner.

The Department also revised § 685.206(e)(10)(i) to state that the school's response must be submitted within a specified timeframe included in the notice, which shall be no less than 60 days. To give the borrower as much time as the school, the Department also revised § 685.206(e)(10)(ii) to give the borrower no less than 60 days to submit a reply after receiving the school's response and any evidence otherwise in the possession of the Secretary. Although commenters suggested a timeframe less than 60 days for the school's response and the borrower's reply, the Department would like to give both borrowers and schools ample and equivalent time to review and respond to each other's submissions. The Department realizes that borrowers and schools have other matters to attend to and would like both borrowers and schools to have sufficient time to compile records to support their respective submissions. These timeframes also reduce the administrative burden on the Department. Because of potential process changes over time, the Department will provide more specific instructions in the application and notice to institutions and students rather than in the final regulation.

The Department does not agree that it has all of the evidence required to adjudicate borrower defense claims in its possession. For example, for one college, the Department did not complete an investigation of the documents provided by the institution, but relied on the California Attorney General to review some of the documents and draw conclusions. It was the California AG's conclusions, and subsequent allegations, that prompted the Department to take action. The Department must also assess financial harm for each pending claim and may not immediately have all the relevant evidence necessary to make such a determination.

As stated in the 2018 NPRM, the Department is committed to providing both borrowers and schools with due process and affords both the borrower and the institution the opportunity to see and respond to evidence provided by the other. We are revising the final regulations to expressly afford the borrower an opportunity to file a reply to address the issues and evidence in the school's submission as well as any evidence otherwise in the possession of the Secretary.

The Department's regulations at § 685.206(e)(3) provide how determinations will be made and examples of evidence of misrepresentation. Although such a process may be longer, this approach provides a fair and more equitable process for both borrowers and institutions.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020. The Department is also revising at § 685.206(e)(10) to allow the borrower to file a reply to address issues and evidence in the school's submission as well as any evidence otherwise in the possession of the Secretary.

The Department revised § 685.206(e)(16)(ii) to specify that the Department will notify the school of the defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application. The Department also revised § 685.206(e)(10)(i) to state that the school's response must be submitted within a specified timeframe included in the notice, which shall be no less than 60 days.

Comments: Some commenters sought assurance that, while a borrower's defense to repayment claim is pending, the borrower's loans should be placed in forbearance so that no additional financial burden accrues while the claim is being adjudicated.

One commenter suggested that we include a provision that would forgive a borrower's interest accrual when the adjudication timeline is not met by the Department. The commenter asserts that this would be a show of good faith to borrowers, assuring them the Department will process claims in a reasonable timeframe, and that borrowers will not be the ones to pay the price if it does not.

Discussion: As explained above, the Department is willing to place claims into administrative forbearance while a claim is pending. The Department determined that the accrual of interest while a loan is in administrative forbearance would deter a borrower from filing an unsubstantiated borrower defense to repayment application.

The Department is changing the procedures to process borrower defense to repayment applications in these regulations. As stated in the 2016 final regulations, we are still unable to establish specific timeframes for processing claims. Neither these final regulations nor the 2016 final regulations set a timeline for the Department's adjudication. Nonetheless, the Department will strive to efficiently resolve all borrower defense to repayment applications in a timely manner. In lieu of forgiving a borrower's interest accrual, the Department will place the loans in administrative forbearance while the borrower defense to repayment application is pending. As explained, above, the Department wishes to deter borrowers from filing unsubstantiated borrower defense to repayment claims, and interest accrual will serve as a deterrent. Automatically placing loans in administrative forbearance is a compromise from the Department's position in the 2018 NPRM, proposing to require borrowers to request administrative forbearance separately from the borrower defense to repayment application. Automatically granting administrative forbearance to borrowers who complete and submit a borrower defense to repayment application is a sufficient response to the concern raised by the commenter about interest accrual.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020. The Department is amending § 685.205(e)(6) for loans to be placed in administrative forbearance for the period necessary to determine the borrower's eligibility for discharge under § 685.206, which includes the borrower defense to repayment regulations in these final regulations.

Appeals

Comments: Several commenters advocated for the inclusion of an appeals process for schools when a borrower defense to repayment claim is approved by the Department and for borrowers when a claim is denied. These commenters argued that, under the proposed regulations, a school seeking review of an approved borrower defense to repayment claim would be required to appeal their case in Federal court and create too high a bar for both borrowers and schools. The commenters assert that a non-appealable decision by the Department is an affront to the basic elements of due process rights of schools accused of misrepresentation by former students.

One commenter requested an appeal be specifically permitted when new

evidence comes to light. This commenter noted that, in a rule that requires borrowers to demonstrate intent, knowledge, or reckless disregard to meet the Federal standard for loan discharge, evidence is likely to come from State and Federal investigations spurred by borrower complaints, and with the extremely limited filing deadline that had been proposed, the taxpayer risk of that reconsideration is minimal.

Some commenters expressed general concern that the adjudicatory process does not allow borrowers to reapply based on new evidence. These commenters inquired whether borrowers who have received denials will be permitted to submit new applications with new evidence. These commenters suggested that to the extent the Department denies borrower defense applications for failure to state a claim, the Department should notify the borrower of the reason for the denial in writing and should allow for reconsideration if a new application with new evidence is submitted.

Another commenter asserted that it is unjust to provide schools, and not students, greater due process rights, including the ability to appeal a Department's decision.

Discussion: The Department does not believe it is necessary add an appeals process to the adjudication process, nor does due process require an appeal. The Department provides both the borrower and the school the opportunity to see and respond to evidence provided by the other, which its current procedures for adjudicating borrower defense to repayment claims do not require. Additionally, the Department is providing both borrowers and institutions an opportunity to review and respond to evidence otherwise in possession of the Secretary that is used to adjudicate the claim.

It is incumbent upon borrowers and schools to provide as much information as possible when making or responding to a borrower defense claim, and these final regulations provide a fair and equitable process for both parties. A party may challenge the Department's decision through a judicial proceeding, and courts are required to liberally construe pleadings of a party who is not represented by an attorney. Additionally, the Department is not the only avenue of relief for a borrower; the borrower may pursue relief through his or her State consumer protection agency or avail himself or herself of other consumer protection tools.

Although the Department does not allow borrowers to submit an appeal, reapply, or request reconsideration of the application, the Department made certain revisions to address concerns about newly discovered evidence. As stated above, the Department revised § 685.206(e)(7) to state that the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e) or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered in the exceptional circumstance when there is a final, contested, non-default judgment on the merits by a State or Federal Court that establishes that the institution made a misrepresentation, as defined in § 685.206(e)(3), or a final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in § 685.206(e)(3).

This exceptional circumstance allows the borrower to reapply and provide newly discovered evidence to the Department for consideration. Additionally, as explained in the section regarding pre-dispute arbitration agreements, the limitations period will be tolled for the time period beginning on the date that a written request for arbitration is filed, by either the student or the institution, and concluding on the date the arbitrator submits in writing, a final decision, final award, or other final determination to the parties. Tolling the limitations period for such a pre-dispute arbitration arrangement between the school and the borrower will allow the borrower to discover evidence that may potentially be used in a borrower defense to repayment application and also provide the school with the opportunity to resolve the claim without cost to the taxpayer. Finally, the Department is providing a more robust borrower defense to repayment process in allowing both borrowers and schools to view and respond to each other's submissions. This robust process will make it less likely that there will be newly discovered evidence.

As stated above, the Department does not have sufficient resources to perform a review of claims to assess whether the borrower failed to state a claim and to allow for reconsideration if a second application with new evidence is submitted. Such a process will unnecessarily divert resources from the timely review of other claims. Such a process also will result in giving borrowers countless attempts to file a satisfactory application. The borrower is required to submit a completed application, which the Department will review during the regular adjudication process.

The Department's process also does not provide schools with an appeal. The Department may choose to initiate a proceeding to require a school whose act or omission resulted in a successful borrower defense to repayment to pay the Department the amount of the loan to which the defense applies. The recovery proceeding, which would be conducted in accordance with 34 CFR part 668 subpart G, is not an appeal.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020. As noted above, the Department revised § 685.206(e)(7) to provide that the Secretary may extend the time period when a borrower may assert a defense to repayment under section 685.206(e) or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered in two exceptional circumstances. The Department is revising § 685.206(e)(10) to provide that a borrower will have the opportunity to review a school's submission and to respond to issues raised in that submission. The proposed regulations also are further revised to give the borrower an opportunity to file a reply that addresses the issues and evidence raised in the school's submission as well as any evidence otherwise in possession of the Secretary.

Independence of Hearing Officials and Administrative Proceeding

Comments: Some commenters suggested that the Department use Administrative Law Judges (ALJs) to review and make determinations on borrower defense to repayment claims. These commenters argued that ALJs are legal professionals and would provide a level of assurance to all parties that the process is fair. Some commenters also argued that administrative review by ALJs instead of a review by Department staff will insulate schools from any political bias and asserted that the Department's staff varies based on the President's administration.

One commenter recommended that an ALJ make the determination on a claim, and that the parties be permitted to appeal this determination within a specified time. This commenter would require the Department to issue the determination on appeal in a manner consistent with the publication of decisions from the Department's Office of Hearings and Appeals (OHA). Neither party would be able to appeal the determination to the Secretary.

Other commenters expressed concern that the adjudication process creates a conflict of interest within the Department, since the Department would be responsible for advocating on behalf of borrowers and determining the outcome of the case. These commenters urged the Department to ensure the independence of decision makers involved in borrower relief determinations.

Discussion: We believe that, under the 2016 final regulations, the Department held too much power in that the Secretary could both initiate group claims and adjudicate appeals of those claims, and the institution, assuming the institution did not close, would have a limited opportunity to respond to the Department's allegations in the group claim process. Under these final regulations, only a borrower may initiate a claim, and both the borrower and the institution always have the opportunity to provide evidence to support their positions. Because the Secretary is required to provide to borrowers and institutions any additional evidence in their possession and that is used to adjudicate a claim, there is a greater level of transparency in the adjudication process.

In contrast to the 2016 final regulations, these final regulations do not provide a process for the Secretary to initiate a claim. Section 455(h) of the HEA expressly states that the ''Secretary shall specify in regulations which acts or omissions of an institution of higher education a *borrower* may assert as a defense to repayment of a loan made under this part.'' (*emphasis* added) We believe the better reading of Section 455(h) of the HEA is for the Department to adjudicate only borrower-initiated defense to repayment claims. We believe this will result in the adjudication of such claims being more balanced and less influenced by changes in Department policy.

Through these final regulations, the Department is providing a fair and equitable process that does not require OHA or ALJs for the determination of a borrower defense to repayment claim. The Department has learned through processing tens of thousands of defense to repayment claims that there are not sufficient resources to subject each claim to an overly-extensive administrative procedure, burdening students and delaying the timely adjudication of claims. The Department believes that including the OHA in the process of adjudicating claims would create a regulatory process that is more costly for the Department to administer and could create the false impression that the claim or the determination are subject to a hearing and appeal, which is not the case.

The Department appreciates the suggestion regarding the incorporation of an administrative law judge in the borrower defense process, but we have determined, as above, that this would unnecessarily complicate, make more expensive, and create confusion about the availability of a hearing and appeal.

The commenter's inclusion of an ALJ would not change the Department's calculation of not including an appeals process in these final regulations, as explained in the previous section.

The Department does not advocate on behalf of the borrower or the school. The Department is a neutral arbiter and will consider the evidence submitted by both the borrower and the institution. Additionally, the Department will provide both the borrower and the school with any evidence otherwise in the possession of the Secretary, and both parties will have an opportunity to respond to such evidence.

Changes: The Department adopts, with changes for organization and consistency, the approach in Alternative B for paragraphs (d)(5) introductory text and (d)(5)(i) and (ii) (Affirmative and Defensive) for loans first disbursed on or after July 1, 2020.

Borrower Defenses—Relief (§ 685.206)

General

Comments: One commenter suggested amendments to the proposed regulations to require that, in the case of an approved borrower defense to repayment, the Secretary reverse an affected loan's default status and reinstate the borrower's eligibility for title IV aid, and update reports to consumer reporting agencies to which the Secretary had previously made adverse credit reports regarding the loan. The commenter noted that proposed regulations provide that the Secretary may take such actions and stated that regardless of whether both affirmative and defensive claims are allowed, the Secretary should always reverse an affected loan's default status and any adverse credit reports as well as recalculate a borrower's eligibility period for which the borrower may receive Federal subsidized student loans.

Discussion: The Department's practice has been, and currently is, that if the Department had previously made adverse credit reports to consumer reporting agencies regarding a Federal student loan that is the subject of an approved borrower defense application, the Department will take the appropriate steps to update those credit reports. Similarly, it is the Department's practice that, if appropriate, the necessary steps will be taken to reinstate the borrower's eligibility for title IV aid.

The Department revised the regulations to expressly provide that the relief awarded to a borrower will include updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan. Additionally, the Department is revising the regulations to reference that as part of any further relief the borrower may receive, the Department will eliminate or recalculate the subsidized usage period that is associated with the loan or loans discharged, pursuant to 34 CFR 685.200(f)(4)(iii). The Department did not rescind the revisions made to 34 CFR 685.200 through the 2016 final regulations. The Department also is clarifying that the list of further relief a borrower may receive is an exclusive list.[108]

However, such steps may not be applicable for all approved borrower defense applicants. For example, we do not anticipate that all approved borrower defense applicants will have been subject to adverse credit reporting as a result of a defaulted Federal student loan. Similarly, not all approved borrower defense applicants will need a determination that they are not in default on their loans because there may be borrowers who are not in a default status and who apply for borrower defense discharges.

We also do not believe it is appropriate to expressly require in the final regulations that the Secretary recalculate a borrower's eligibility period for which the borrower may receive Federal subsidized student loans. Not all borrowers may have received subsidized Federal student loans, so such an action would not be relevant to all borrowers. Further, the changes made to § 685.200(f) (2017) by the 2016 final regulations, which are now effective, require that the Department recalculate the period for which the borrower may receive Federal subsidized student loans if a borrower receives a borrower defense to repayment discharge and sets forth the specific conditions for when the recalculation may occur. As a result, we

[108] The exclusive list of further relief is located at § 685.206(e)(12)(ii). Further relief includes one or both of the following, if applicable: (1) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV; and (2) eliminating or recalculating the subsidized usage period that is associated with the loan or loans discharged pursuant to § 685.200(f)(4)(iii).

believe it is appropriate to designate the recalculation of a borrower's subsidized Federal student loan eligibility period as further relief that may be provided by the Secretary if a borrower defense to repayment application is approved.

For clarity only, we have moved the phrase ''reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection'' from the list of potentially applicable further relief in § 685.206(e)(12)(ii) to the section on borrower defense relief in § 685.206(e)(12)(i). If applicable, this item would be part of borrower defense relief itself, so the Department believes including it in the list of further relief could be confusing.

Changes: As noted above, we moved ''reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection'' from the list of potentially applicable further relief in § 685.206(e)(12)(ii) to the paragraph describing borrower defense relief in § 685.206(e)(12)(i). Additionally, the Department revised the regulations to note that ''relief'' and not ''further relief'' includes updating credit reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan in § 685.206(e)(12)(i). The Department revised § 685.206(e)(12)(ii)(B), which concerns further relief, to reference 34 CFR 685.200(f)(4)(iii), which address subsidized usage periods. Finally, the Department revised § 685.206(e)(12)(ii) to clarify that the list of ''further relief'' is an exclusive list.

Partial Discharges

Comments: Several commenters supported the Department's position that a partial loan discharge as relief for an approved borrower defense application would be warranted in some circumstances. One such commenter stated that that the proposed process would provide fair compensation to borrowers and tiers of relief to compensate borrowers as necessary. Another commenter asserted that the proposed approach, in allowing for partial relief, would provide the Department with flexibility in providing borrowers with relief. This commenter expressed support for a tiered method of relief that had been developed by the Department in 2017 based upon a comparison of earnings between a borrower defense claimant to earnings of graduates in a similar program. The commenter also supported adopting this methodology for calculating partial relief for the purposes of this regulation. One commenter asserted that relief should be based on the degree of harm suffered by a borrower.

Several commenters, in support of the provision of partial relief, suggested that partial relief should be limited to the amount of tuition paid with the Federal student loan and not include funds received for living expenses. One such commenter stated that relief should not be capped at the total cost of a student's attendance at the school, as opposed to the total amount of tuition and fees. This commenter asserted institutions should not be held responsible for portions of a Direct Loan, up to the full cost of attendance, including the student's living expenses, because schools are unable to limit the amount of Direct Loans students may choose to take out to support their living expenses under the Department's regulations. This commenter also argued that the nexus between a school's act or omission, underlying a borrower defense to repayment, is more attenuated than the nexus between the act or omission and the tuition and fees charged by the institution. This commenter stated that it is difficult to see how a claim based on an act or omission relating to the provision of educational services, as required under the proposed regulations, could be connected to a Direct Loan used to pay for living expenses given that the amount of such a loan is controlled by the Department's loan limits and the student's decisions.

Many commenters advocated full relief, in the form of a complete discharge of a borrower's remaining Direct Loan balance and a refund of payments made, for borrowers who demonstrate that they qualify for borrower defense to repayment relief. Some of these commenters supported full relief for approved applications in each instance, and others supported establishing a presumption of full relief.

Many commenters argued that any effort to determine a partial loan discharge amount would lead to the inconsistent treatment of borrowers; be subjective, costly, time-consuming, and difficult to administer; add to the burden on the Department; and unnecessarily delay the Department's provision of borrower defense relief. One group of commenters stated that a calculation of partial relief based upon a borrower's degree of harm suffered would be speculative because most students would not have enrolled had the school made truthful representations. One commenter stated that full relief should be provided, given the profit the Department receives from the student loan program.

Generally, some of the commenters who objected to the Department's position that a partial loan discharge would be warranted in some circumstances argued that borrowers who had demonstrated misrepresentation by their school would have been harmed in many ways and incurred financial harm, and non-financial harms, beyond the obligation to repay a Federal student loan. As a result, even full relief from the Department through the borrower defense process would be insufficient to remedy students' injuries.

One group of commenters asserted that under State unfair and deceptive practices laws that have traditionally been the primary basis for borrower defense claims, all such types of direct and consequential damages and pecuniary as well as emotional harms may provide a basis for relief. According to these commenters, such relief may include relief exceeding the amount paid for the service or good.

Several commenters suggested that the Department adopt an approach similar to that used by enforcement agencies and financial regulators when consumers have been fraudulently induced to take on other types of consumer debt. Those other regulators, stated one of the commenters, seek to unwind the transaction and put borrowers in the same position they would have been absent fraud. This commenter stated that partial relief in accordance with an unspecified methodology on the basis of the value provided by the services received would be difficult to determine and deviates from the approach used by financial regulators.

In arguing for a full relief approach, several commenters stated that allowing partial relief would establish a presumption that the education provided by a school that has been found culpable of wrongdoing has some value to the borrower. These commenters stated that the provision of partial relief would reduce the Department's incentive to ensure it is properly monitoring schools to prevent misconduct and harm both borrowers and taxpayers.

Commenters urged the Department to abandon its proposal to provide partial relief stating that the Department spent three years trying to develop a methodology to calculate partial discharges and have been unsuccessful in devising a fair and consistent way to do so. These commenters suggested that, consistent with closed school and false certification loan discharges, the

borrowers should receive full discharges of the Federal student loans associated with their defense to repayment claim. One group of such commenters disagreed with the Department's rationale in the NPRM for why full relief is justified for the false certification and closed school processes, but not for the borrower defense process. These commenters asserted the Department's rationale that the false certification and closed school discharge processes are straightforward as compared to the borrower defense process. This group of commenters also stated that if the Department is unwilling to provide full relief for all approved borrower defense claims, the Department should simplify the relief process and ensure that borrowers receive consistent relief, such as by establishing a presumption of full relief. Where full relief is not warranted, the commenters suggested that the Department be required to explain in writing the basis for its decision and provide the borrower with an opportunity to respond.

One group of commenters asserted that it was incumbent upon the Department to clearly delineate the conditions borrowers would need to meet in order to receive partial or full relief. The commenters noted that, given the burden the Department proposed to impose upon borrowers to assert a successful claim, providing full relief for the borrower and recovering those funds from the school remains the appropriate action for the Department to pursue. The commenters further asserted that there are a number of reasons to doubt the Department's ability to make fair and accurate determinations of the degree of financial harm suffered by each individual borrower, and stated that any such determination would need to account for a wide range of factors that could include the borrower's education and employment history, the regional unemployment rates both overall and in the borrower's career field, and numerous other circumstances that directly impact an individual's earnings potential. The commenters asserted that, even if these factors could be reliably measured and some income gain determined to exist, that gain would then need to be measured against the expenditures the borrower put towards his or her program. The commenters noted that, as evidence of the inherent complexity of this method, the proposed rule referenced the serious difficulties the Department faced in attempting to create a formula to address this, and resultantly, does not include a proposed formula. The commenters also referenced the Department's claim of the associated administrative burden imposed by reviewing the tens of thousands of borrower defense claims that have been asserted in recent years and noted that, setting aside the significant challenges inherent in attempting to make these determinations at all, that doing so on the scale considered would greatly increase the time and difficulty involved in processing each claim, adding enormously to the burden on the Department and further delaying the expeditious review of claims.

Another commenter expressed confusion as to why the borrower's financial circumstances would be considered in determining the amount of relief to which he was entitled. The commenter agrees that a borrower's choice not to pursue a field related to their course of study at a school or periods of unemployment due to regional economic circumstances should not be a basis for relief, but was concerned that the language offered in the proposed regulation would create inequitable outcomes for borrowers who experienced the same misrepresentations, but had more successful outcomes than others. The commenter asserts that a borrower's relief in the case of proven misrepresentation should in no way be based on whether the borrower was savvy enough to pursue a different field, transfer schools, live in a more economically advantageous region, or be simply more fortunate than other borrowers. The commenter recommends that a borrower should have to show harm to receive a loan discharge, and that the measure of that harm should in no way be linked to an individual's life choices or circumstances, but instead on the harm that resulted from the fraudulent activities of the school.

Commenters asked whether the Department could approve a borrower defense discharge and subsequently determine that the amount of financial relief to be provided would be zero. The commenters also asked whether borrower defense claims could be made on the basis of misrepresentations about job placement, exam passage rates, and the transferability of credits.

One commenter stated that if a borrower has been harmed, or will clearly suffer harm, as a result of a school's misrepresentation, full relief should be provided. This commenter asserted that partial relief should be provided only in very limited cases where the value of the harm is directly related to the misrepresentation.

One commenter expressed concerns about tax implications and credit reporting for partial relief awards. The commenter stated that while a rescission of a transaction may not result in taxable income for borrowers as a ''purchase price adjustment'' and lead to the deletion of the related tradeline from a borrower's credit report, the Department's proposed rule would not offer borrowers such protections.

One commenter requested the Department more clearly articulate how partial relief would be applied in the case of a defensive claim asserted as to a defaulted loan. Specifically, this commenter asked whether the Department would strike the borrower's record of default and if the borrower would be obligated to pay for collection costs on the partial relief provided.

Discussion: The Department appreciates the support of commenters regarding its proposal to provide for partial loan relief, if warranted, in these final regulations, which is consistent with the existing regulation at 34 CFR 685.222(i). As we stated in 2016, given the Department's responsibility to protect the interests of Federal taxpayers as well as borrowers, we do not believe that full relief is appropriate for all approved borrower defense claims, nor do we believe that it is appropriate to establish a presumption of full relief.[109]

We acknowledge that an approach that allows the Department to make determinations of partial relief may be more administratively burdensome and time-consuming because it involves a more complicated analysis than an approach that assumes full relief. However, given the taxpayer and borrower interests at issue, as well as those of current and future students who will bear the cost of an institution's repayment of the claim to the Department, we continue to believe that an approach that provides the Department with the flexibility to provide partial relief, if warranted, strikes an appropriate balance between these interests.

The Department agrees that not every borrower who experiences a misrepresentation suffers the same amount or types of harm, for a variety of reasons including those listed by commenters. However, since the degree of financial harm suffered is critical to the determination of defense to repayment relief for the reasons explained above, the Department must take this into consideration when awarding relief. It is impossible to know whether all borrowers who attended the same institution experienced the same misrepresentation, relied on that

[109] See 81 FR 75973–75976.

information to make the same decision(s), or were harmed by the misrepresentation in the same way or to the same degree.

As the Department explains in one of the examples for how relief may be determined for substantial misrepresentation borrower defense claims in Appendix A corresponding to section 685.222 of the 2016 final regulations, a borrower would not be eligible for defense to repayment relief even if an institution was proven to have misrepresented the truth, if the student still received an education of value. For example, presume a prestigious law school misstated its full-time employment rate six months after graduation by 20 percent, but the borrower graduated, obtained and maintained employment as an attorney, and has above average earnings; and the school has maintained its strong reputation. In this case, the Department may determine, notwithstanding other evidence, that the institution made a misrepresentation related to the making of a Direct Loan for enrollment at the school; however, given the facts of this hypothetical, the Department could also determine that the borrower was not harmed by the misstatement of the placement rates.

It is possible that a successful borrower defense claim could be based upon evidence of an institutional misrepresentation of job placement rates, exam passage rates, the transferability of credits, or other similar factors, if it is related to the making of a Direct Loan for enrollment at the school.

Although we are now adopting a new misrepresentation standard for loans first disbursed on or after July 1, 2020 that does not incorporate Appendix A from the 2016 final regulations, the same principle of educational value from that example applies.

We disagree that such an approach would be subjective and lead to the inconsistent treatment of borrowers. As we stated in 2016, administrative agency tribunals and State and Federal courts commonly make relief determinations, and the proposed process provides Department employees reviewing borrower defense applications with the same discretion that triers-of-fact in other fora have.[110]

Nor do we believe that a determination of partial relief, if warranted, under the proposed regulations would be speculative. Under § 685.206(e)(8), a borrower would be required to state the amount of financial harm that they claim to have resulted from the school's action and to supply any supporting relevant evidence. Given that applicants will provide information regarding the amount of their financial harm, the Department believes that it will be able to make relief determinations in a reasonable manner and has retained this requirement in these final regulations.

Upon further consideration, the Department revised § 685.206(e)(12)(i) to clarify that the amount of relief that a borrower receives may exceed the amount of financial harm, as defined § 685.206(e)(4), that the borrower alleges in the application pursuant to § 685.206(e)(8)(v) but cannot exceed the amount of the loan and any associated costs and fees. The Department realizes that the school's response and any evidence otherwise in the possession of the Secretary may reveal that a borrower's allegation of financial harm is too low.

Accordingly, the Department revised § 685.206(e)(12)(i) to expressly note that in awarding relief, the Secretary shall consider the borrower's application, as described in 685.206(e)(8), which includes any payments received by the borrower and the financial harm alleged by the borrower, as well as the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, as described in § 685.206(e)(10). The Department did not intend to limit its award of relief to the financial harm that the borrower alleges. The Department also did not intend to limit its ability to award relief to consideration of the financial harm that the borrower alleges.

We acknowledge that borrowers subjected to the same misrepresentation may suffer differing degrees of financial harm. However, given the Department's interests as explained above, we do not believe it is inequitable to provide each borrower defense applicant with a meritorious claim with relief that may account for the borrower's degree of harm or injury and is in accord with the approach taken by the courts under common law.

The Department disagrees that a full relief approach should be taken because of any profit made by the Federal government on the Federal student aid programs. The Department is responsible for the interests of all Federal taxpayers whose taxes fund the Federal student aid programs, and as stated above, the Department believes an approach that balances those interests with those of borrowers seeking borrower defense relief is best served by taking an approach to relief that would allow for partial relief, if warranted, whether the loan program proves profitable or not.

While we understand that some enforcement agencies and/or financial regulators may seek ''full relief'' for consumers under Federal or State consumer protection law, as pointed out by some commenters, such agencies are not directly responsible, as the Department is, for the administration of a Federal benefit program funded by Federal taxpayer dollars. We also understand that under some State consumer protection laws, consumers may be able to receive similar relief. However, we do not believe such an approach is appropriate for the borrower defense process given the Department's responsibility to Federal taxpayers. The Department does not possess the authority to authorize relief beyond the monetary value of the loan made to the borrower. We note that nothing in Department's regulations precludes borrowers, who are unsatisfied with the amount of relief they receive, from seeking such relief directly from their schools through the Federal or State court systems under Federal or State consumer protection law.

We decline at this time to include a specific relief methodology for borrower defense claims asserted under the misrepresentation standard for loans first disbursed on or after July 1, 2020, or to include further conceptual examples such as those in appendix A to 34 CFR 668, part 685. While the Department will continue to consider the borrower's cost of attendance and the value of the education provided by the school for borrower defense claims asserted under the substantial misrepresentation standard for loans first disbursed on or after July 1, 2017, and before July 1, 2020, we believe that the proposed regulation appropriately provides the Department with the flexibility to determine the appropriate measure of relief that should be provided to a borrower defense applicant for claims asserted as to loans first disbursed on or after July 1, 2020.

As the Department's standard for borrower defense claims asserted after July 1, 2020, requires borrowers to demonstrate financial harm and state the amount of that harm, the Department believes that it will be able to make appropriate relief determinations in consideration of the borrower's degree of financial harm based upon the specific circumstances established by borrower defense applicants.

The Department will make its own determination of financial harm, as defined in § 685.206(e)(4), based on the information in the borrower's

[110] See 81 FR 75975.

application, the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary that was provided to both the school and the borrower. The Department revised the final regulations to reflect that the Department makes a determination of financial harm and will award relief equivalent to the financial harm incurred by the borrower. As explained above, the Department's award of relief may exceed the financial harm alleged by the borrower in the borrower defense to repayment application. The Department's award of relief, however, may not exceed the Department's own determination of financial harm.

''Financial harm'' is defined in § 685.206(e)(4), in part, as the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in § 685.206(e)(3). Financial harm, thus, will always be related to an alleged misrepresentation. For example, an alleged misrepresentation may include a significant difference between the earnings the institution represented to the borrower that he or she would be likely to earn after graduation and the borrower's actual post-graduation earnings or aggregate earnings reported by the Department for the program in which the borrower was enrolled. Pursuant to the definition of financial harm in § 685.206(e)(4), the Department will determine how much relief to award by considering the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation and the factors outlined in 34 CFR 685.206(e)(4)(i) through (iv): Periods of unemployment after graduation unrelated to national or local economic recessions, significant differences in cost of attendance from what the borrower was led to believe, the borrower's inability to secure employment after being promised employment, and inability to complete the program because of a significant reduction in offerings.

The Department would like to be transparent about relief determinations and has revised the regulations to expressly state the Department will specify the relief determination in the written decision and publish decision letters with personally identifiable information redacted.[111] Accordingly, the borrower and school will know how the Department calculated the relief to the borrower.

Unlike the 2016 final regulations, these final regulations do not expressly state that the Department will advise the borrower that there may be tax implications as a consequence of any relief the borrower receives. Such an express provision is not necessary because the Department intends to inform the borrower at the outset of the borrower defense to repayment process that there may be tax implications, likely by posting such information on the Department's website. The Department, however, cannot provide tax advice, as the tax implications will vary depending on an individual borrower's circumstances and does not wish to mislead borrowers in this regard.

We disagree that the proposed regulation allowing for partial relief, if warranted, would reduce the Department's incentive to monitor schools' wrongdoing. The Department actively monitors schools for their compliance with the Department's regulations as part of its regular operations and will continue to do so, regardless of the amount of borrower defense relief provided to borrowers.

With regard to the possible tax implications and credit reporting for partial relief awards, the Department does not have the authority to determine how a full or partial loan discharge may be addressed for tax purposes. If a borrower receives a partial loan discharge, then the Department will update reports to consumer reporting agencies to which the Secretary previously made adverse credit reports. The Department has revised 34 CFR 685.206(e)(12)(1) to expressly include updating reports to consumer reporting agencies as part of the ''relief'' that the borrower will receive and not ''further relief'' that a borrower may receive.

We maintain our position from the NPRM[112] and the 2016 final regulations that the amount of relief awarded to a borrower during the defense to repayment process would be reduced by any amounts that the borrower received from other sources based on a claim by the borrower that relates to the same loan and the same misrepresentation by the school as the defense to repayment. To clarify that position, we are incorporating language from § 685.222(i)(8) on that point into § 685.206(e)(12) of these final regulations.

After careful consideration of the comments, our internal determination processes, and our ability to rely on the data available to us, we do not support the proposal to reduce the amount of relief by the amount of credit balances received by the borrower. The Department now agrees with the commenters who suggested that, in a situation where the borrower is granted full relief, the portion of the loan that can be forgiven should not be limited to the portion borrowed to pay direct costs to the institution. The Department will carefully consider the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation.

The currently existing regulations, at 34 CFR 685.222(i)(2)(i), provide that for claims brought under the substantial misrepresentation standard, as stated in 685.222(d)(1), as to loans first issued on or after July 1, 2017, the Department factors in the borrower's cost of attendance (COA) to attend the school, as well as the value of the borrower's education. In the preamble to those regulations, we justified factoring the student's COA into determinations of relief by explaining, in part, that the COA reflects the amount the borrower was willing to pay to attend the school based upon the information provided by the school and the Federal student loan programs were designed to support both tuition and fees and living expenses. We also noted that we did not believe that an institution's liability should be limited to the loan amount the institution received, because that amount does not represent the full Federal loan cost to a student for the time spent at the institution.

We adopt the currently existing regulation's rationale here. While it is true that a student may not have taken out some Federal student loans for living expenses absent his or her attendance at the school, the student nonetheless received the proceeds of that loan to attend the school. The nexus between any act or omission underlying a valid borrower defense to repayment claim and a student's total COA while enrolled is sufficiently strong to necessitate full relief, where appropriate.

As a result, in these final regulations, we will not exclude credit balances from the relief calculation as to loans first disbursed on or after July 1, 2020. Relief will not be limited to those portions of a Direct Loan that are directly received by the institution. The portions of the loan that generated credit balances will be included in defense to repayment loan discharges. Additionally, treating students who lived on-campus differently than those who decided, for whatever personal reasons, to live off-campus would create disparate outcomes between these two populations of students that would be difficult for the Department to justify.

[111] *Note:* It is possible that particular programs and/or schools are so small, even including the school or program's name could be too revealing. We will consider an exception in these types of circumstances.

[112] 83 FR 37263.

Because a borrower must make a defense to repayment claim within three years of exiting the institution, the Department does not believe that the loan discharge or collections should be limited to the amount of payments a borrower has made during that or any other period of time. Debt relief is based on the total debt associated with the enrollment during which the misrepresentation occurred, plus accumulated interest.

Because the Department is no longer differentiating between affirmative and defensive claims, we do not believe it is necessary to develop different protocols for assessing harm in either case.

Changes: The Department revised § 685.206(e)(8)(v) to allow the borrower to state the amount of financial harm in the borrower defense to repayment application. The Department will specify the relief determination in the written decision as provided in 34 CFR 685.206(e)(11)(iii). The Department also is revising the language in § 685.206(e)(8)(vi) with respect to the borrower defense application, and § 685.206(e)(10) with respect to a school's submission of evidence.

The Department revised § 685.206(e)(12)(i) to clarify that the amount of relief that a borrower receives may exceed the amount of financial harm, as defined in § 685.206(e)(4), that the borrower alleges in the application pursuant to § 685.206(e)(8)(v) but cannot exceed the amount of the loan and any associated costs and fees. The Department further revised § 685.206(e)(12) to expressly note that in awarding relief, the Secretary shall consider the borrower's application, as described in § 685.206(e)(8), which includes any payments received by the borrower and the financial harm alleged by the borrower, as well as the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, as described in § 685.206(e)(10). The Department also revised the final regulations in § 685.206(e)(12)(i) to reflect that the Department makes a determination of financial harm and will award relief equivalent to the financial harm incurred by the borrower.

The Department revised 34 CFR 685.206(e)(12)(i) to expressly include updating reports to consumer reporting agencies as part of the ''relief'' and not ''further relief'' that a borrower will receive.

Also, for clarity, we have added to § 685.206(e)(12) the language included in § 685.222(i)(8) of the 2016 final regulations, regarding a borrower's relief not exceeding the amount of the loan and any associated fees, and being reduced by other forms of recovery related to the borrower defense.

Comments: Several commenters noted that the Department requested public comment on potential calculations for partial relief but did not include a proposal for how the Department envisions partial relief might be calculated. These commenters recommended that the Department propose a methodology in regulation and obtain public comment on the proposal. One group of these commenters asserted that a failure to include a proposal for calculating partial relief in the proposed regulations is a violation of the notice and comment requirements of the Administrative Procedure Act.

Discussion: The Department disagrees that it should or is required to publish an internal methodology for partial discharge for borrower defense in the **Federal Register** and seek notice and comment. As noted by the commenter, the Department sought public comment on potential methods for calculating relief in the NPRM. After considering the comments received, the Department believes that given the many factors involved in making a borrower defense determination, from those relating to the availability of data, the specific facts of any individual claim, as well as the evolution of the types of claims that are being filed, it is appropriate that the Department maintain discretion and flexibility to make relief determinations on a case-by-case basis as appropriate to the individual circumstances of a particular claim.

The Department also disagrees that it was required to include a proposal for a partial relief methodology in the 2018 NPRM. In the 2018 NPRM, the Department sought public comment on methods for calculating partial relief. And, after reviewing related comments, the Department is declining to adopt any one uniform methodology in these final regulations. These actions are in compliance with the Administrative Procedure Act's notice and comment requirements.

Changes: None.

Comments: One commenter expressed appreciation for the clear statement in proposed 34 CFR 685.206(d)(12)(iii) regarding the borrower's right to pursue relief for any portion of a claim exceeding the discharged amount or any other claims arising from unrelated matters. However, the commenter requested additional clarity in proposed 34 CFR 685.206(d)(12)(i), as the commenter stated that if only partial relief is granted to the borrower, any amounts granted outside of the Federal borrower defense to repayment process should first be credited toward loan amounts that are still owed by the borrower. The commenter asserted that a borrower's obligation to repay discharged amounts should be reinstated as a result of non-Federal relief only if full relief had been granted in the Federal process, or when non-Federal relief exceeds the remaining portion of a borrower's loan after partial relief has been provided.

Several commenters asked the Department to clarify whether financial aid awards related to private student loans, veterans' benefits, or other losses separate from those related to Federal student loans (*e.g.,* educational expenses paid out-of-pocket, tuition payment plans, loss of state grant eligibility, and payment for childcare or transportation) should not be used to offset the discharge of Federal student loans.

Discussion: The Department thanks the commenter for its support for the clarification in proposed 34 CFR 685.206(d)(12)(iii) that a borrower is not limited or foreclosed from pursuing legal and equitable relief under applicable law for recovery of any portion of a claim exceeding that the borrower has assigned to the Secretary or any claims unrelated to the borrower defense to repayment. This provision is similar to the existing provision in 34 CFR 685.222(k)(3) (2017), and the Department does not consider this a change in its position.

The Department does not agree that it is appropriate to reinstate an approved borrower defense applicant's obligation to repay on the loan when the borrower has received a recovery from another source based on the same borrower defense claim, only when the borrower has either received full relief from the Department or has received a recovery that exceeds the remaining portion the borrower's Federal loan, if the borrower received a partial borrower defense discharge. The proposal echoes the language in the Department's existing regulation at 34 CFR 685.222(k)(1) and also does not represent a change in the Department's existing policy. This rule is intended to prevent a double recovery for the same injury at the expense of the taxpayer. As provided in the NPRM, because the borrower defense process relates to the borrower's receipt of a Federal loan, we would reinstate the borrower's obligation to repay on the loan based on the amount received from another source only if the Secretary determines that the recovery from the other source also relates to the Federal loan that is the subject of the borrower defense. Recoveries related to private loans and veterans' benefits, for

example, would not lead to a reinstatement of the borrower's obligation to repay the Federal loan.

Changes: None.

Withholding Transcripts

Comments: One group of commenters supported the position that a school has the ability to withhold an official transcript from a borrower who receives a total discharge of his Federal student loan. These commenters assert that this has always been the case in instances where the borrower was provided a loan discharge through the false certification, closed school, or borrower defense to repayment provisions.

Many commenters strongly opposed the Department's assertion that schools have the ability to withhold transcripts of borrowers who receive loan discharges. The commenters concluded that schools have a moral obligation to maintain and provide students access to their academic records, especially in the case of education disruption due to institutional misrepresentation or unforeseen closure.

One commenter noted that it is unclear why, or whether, a school would have the right to withhold transcripts of a student who does not owe a debt to the school or to the Federal Government. This commenter further notes that bankruptcy case law specifically prohibits the withholding of academic transcripts after a borrower has his student loan debt discharged; the Family Educational Rights and Privacy Act (FERPA) requires that students be granted access to at least unofficial transcripts; and that policies pertaining to withholding transcripts are also a matter of State law and institutional policy, not Federal law or regulation, such that the Department's prohibition may be in violation of these laws and policies. The commenter also opined that including this warning in regulation appears to be a threat intended to deter borrowers from filing claims. The commenter asserts that this warning is unlikely to deter frivolous claims since the consequences do not apply to claimants whose loans are not discharged in full. The commenter recommends that the Department should not imply borrowers who receive discharges should not have access to their transcripts when the Department is not aware of the school's policy and has no authority to establish such a requirement.

Another commenter noted that the allowing schools to withhold transcripts is a retaliatory directive to schools to further harm borrowers who have cleared every hurdle to prove that they have been defrauded.

Discussion: The Department appreciates the commenters who pointed out that the 2018 NPRM simply acknowledges current practice, which allows institutions to establish their own policies regarding the provision of official transcripts to students. The Department agrees that as a result of FERPA regulations, an institution is obligated to make student's academic record available to him or her. However, FERPA does not require an institution to send a borrower a copy of that record or to provide an official transcript.

The Department is not requiring institutions to withhold transcripts. We emphasize the need for institutions to adhere to applicable State laws and policies that may prohibit them from withholding transcripts. To make this clear, we are revising the regulations to state that the institution may, if allowed or not prohibited by other applicable law, refuse to verify, or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

The Department is aware that students who are provided loan relief through bankruptcy may still be able to obtain transcripts. A significant difference, however, is that the institution is not asked to reimburse the Department for any loans taken by the student in the case of a borrower's subsequent bankruptcy. But the Department will seek recovery from the institution for successful borrower defense claims. However, for those borrowers applying for borrower defense relief that are not also petitioning for bankruptcy, the Department believes it is appropriate to generally inform borrowers through an acknowledgement in the borrower defense application that a school may withhold an official transcript, if allowed or not prohibited by other applicable law, in the event that the borrower receives full relief. Such a provision will help inform borrowers of the possibility that the institution may refuse to verify or provide an official transcript, if allowed or not prohibited by other applicable law.

The Department is not suggesting that an institution should withhold a borrower's official transcript or that an institution's right to withhold an official transcript is a retaliatory act. Borrowers, however, should understand that by receiving a full loan discharge, there is a possibility that they may not receive an official transcript. Understanding this possibility will inform a borrower's decision whether to assert that the education they obtained was actually of no value. The higher education community consistently makes the case that higher education has inherent value beyond that which can be measured in job placements and earnings. The Department agrees with that position, which is why we believe that it would be the rare student who received no value whatsoever from the educational experience. In such rare cases, the borrower would have little use for an official transcript from the institution, such as for the purpose of transferring credits or using the credentials earned while in attendance at such an institution.

Changes: We revised the language from proposed § 685.206(d)(3)(vi), now in § 685.206(e)(8)(vi), to state that the institution may, if allowed or not prohibited by other applicable law, refuse to verify, or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan. As previously stated, the Department also is revising the language in § 685.206(e)(8)(vi) with respect to the borrower defense application and § 685.206(e)(10) with respect to a school's submission of evidence.

Transfer to Secretary of Borrower's Right of Recovery Against Third Parties

Comments: None.

Discussion: Like the 2016 final regulations, these final regulations provide that upon granting any relief to a borrower, the borrower transfers to the Secretary the borrower's right of recovery against third parties.[113] Unlike the 2016 final regulations, these regulations refer to ''any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or *the provision of educational services*'' [114] because ''provision of educational services'' is a defined term; the 2016 final regulations instead reference the contract for educational services. The 2016 final regulations note such a transfer or rights from the borrower to the Secretary for the right to recover against third parties includes any ''private fund,'' and these final regulations clarify that the transfer applies to any private fund, including the portion of a public fund that represents funds received from a private party.

Changes: None.

[113] *Compare* 34 CFR 685.222(k) *with* 34 CFR 685.206(e)(15).

[114] 34 CFR 685.206(e)(15)(i).

Borrower Defenses—Recovery From Schools (§§ 685.206 and 685.308)

Institutional Liability Cap

Comments: Several commenters suggested that the Department's recovery from institutions for losses related to the provision of relief to borrowers for borrower defense applications be subject to a maximum limit. One commenter suggested that such institutional liability for a borrower defense claim be capped at some reasonable level and suggested the amount the borrower had paid on the loan during the first three years. Another commenter suggested that the maximum limit should be the amount paid by the student during the first five years from the student's last day of enrollment at the institution. This commenter asserted that without such a limit, borrower defense applicants would be able to bring claims at any point during the repayment of the loan, which could be beyond the document retention period for the relevant documents and affect the school's ability to defend itself.

Discussion: The Department does not agree that there should be a cap on institutional liability for relief granted for an approved borrower defense application. The Department has an obligation to protect the interests of the Federal taxpayer and borrowers. As a result, the Department believes it is appropriate to require an institution to pay the amount of relief provided in the borrower defense process based upon the institution's act or omission. In the separate recovery proceeding against the institution brought under 34 CFR part 668, subpart H, the institution will have the opportunity to dispute the amount of the liability.

We also do not agree that schools will be limited in their defense against a borrower defense relief liability to the Department without a maximum liability limit or a change to the proposed time limit on the Department's ability to recover from the school. The new requirements will apply to borrower defense relief granted as to loans first disbursed on or after July 1, 2020. We believe that schools will adjust their business practices to maintain documents for students with loans first disbursed on or after July 1, 2020, in anticipation of borrower defense claims from those students.

Changes: None.

Limitations Period for Recovering Funds From Schools

Comments: One group of commenters offered support for the Department's proposal for a five-year limitations period for the Department's ability to recover funds from schools in the event of a loan discharge as a result of an approved borrower defense application and requested we include a definition of ''actual notice.''

One commenter objected to the five-year limitations period and suggested that the recovery period should be aligned with the three-year record retention requirement.

Another commenter supported the establishment of a time limit for the Secretary to initiate an action to collect from the school the amount of any loans discharged for a successful borrower defense to repayment claim, but recommended that this limit be consistent with the standard civil statute of limitations of six years.

One commenter suggested that the Department maintain the language in the 2016 final rules (in 34 CFR 685.206 and 685.222 (2017)) allowing the Department to recover from a school the amount of borrower defense relief awarded by the Department, within the later of three years from the end of the last award year that the student-applicant attended the institution or the limitation period that would apply to the cause of action or standard that the borrower defense claim is based, or at any time notice of the borrower defense claim is received during those periods. This commenter stated that the Department's proposal to have a three-year time limit from the last award year the student was enrolled in the institution for such actions related to loans first disbursed before July 1, 2019, is contrary to the Department's stated goal of protecting taxpayers. This commenter also stated that the Department's proposed five-year time limit from the time of the borrower defense adjudication for loans first issued on or after July 1, 2019, was a strong proposal.

Another group of commenters also cited the approach in the 2016 final regulations, which the commenters implied echoes State law concepts such as tolling and discovery to statutes of limitation and asked why the Department has proposed rescinding such provisions. These commenters asserted that the 2016 final regulations seem to allow the Department to recoup more money from institutions and lessen taxpayer liability and were concerned about the budget impact of the proposal. These commenters also asked why the Department's proposal for a five-year limitation period for recovery actions based upon borrower defense relief granted for loans first disbursed on or after July 1, 2019, should not also apply to actions based upon loans first disbursed before July 1, 2019.

Discussion: The Department appreciates the comments in support of the five-year limitations period for the Department to initiate a proceeding against a school. The final regulations provide that such a proceeding will not be initiated more than five years after the date of the final determination included in the written decision referenced in § 685.206(e)(11), and the school will receive a copy of the written decision pursuant to § 685.206(e)(11) for its records. The written decision will provide adequate notice of when the five-year period begins for schools.

The Department believes that since an institution will be provided the opportunity to respond to the borrower's defense to repayment claim in the course of the borrower defense adjudication process, and that claim must be made within three years after the student leaves the institution, the institution will be made aware of the need to retain records relevant to its defense for a borrower defense to repayment claim and adjust its business practices accordingly. As a result, the Department does not agree that a longer time limit, such as six years, for a recovery proceeding is necessary. As explained in the 2018 NPRM, one reason for the recovery action limitation period to be three years is to align with the document retention requirements under the Department's regulations. We acknowledge that schools will retain records once aware of a need due to potential liability from borrower defense applications. The three-year document retention period is one, among other justifications, for the limitations period.

Further, the Department has decided not to align with the typical statute of limitations in civil statutes because that period of time is based on when the alleged act occurred. For a student enrolled in a bachelor's or graduate program, the student may not have had the opportunity to complete the program within that time period, and therefore may not understand that the institution made misrepresentations during the admissions process or enrollment period. Therefore, the Department is using established timeframes that are based on when the student left the institution rather than when the alleged act or omission occurred. The Department believes that a borrower should have three years subsequent to leaving an institution during which time he or she can submit a defense to repayment application.

The Department believes it is similarly appropriate to establish a timeframe during which it can initiate a

collection claim against an institution. The Department believes that the proposed timeframe establishes clear expectations for schools that will provide them with some certainty for their planning and operational needs and will also allow the Department to meet its responsibility to Federal taxpayers. The process by which the Department initiates a collection action against an institution is separate from the process by which the Department adjudicates a defense to repayment claim. Although the Department does not anticipate that it would typically take that long to initiate collection actions, the Department needs sufficient time to initiate that process. The Department believes that five years is ample time to complete that process and collect from the school the amount of the loan discharged.

The amount the Department may collect from the institution is limited to the amount of loan forgiveness granted as part of the defense to repayment determination. Even if it takes five years for the Department to initiate that collection, the amount collected will be limited to the amount of loan forgiveness awarded by the Department at the time of the claim adjudication. The Department will inform the institution at the same time it notifies the borrower of the outcome of the adjudication process.

For the reasons stated above, we are taking a different approach for recovery actions for borrower defense relief based upon loans first issued on or after July 1, 2020. Upon further consideration, the Department has also decided to retain the recovery process time limits and requirements in the 2016 final regulations, at 34 CFR 685.206 and 685.222 (2017), for loans first disbursed before July 1, 2020. As these provisions are currently effective, we do not believe this approach will disadvantage schools that have already made adjustments in their document retention policies and procedures in anticipation of these recovery provisions.

The Department also wanted to assure that a school will receive timely notice of a borrower's allegations in a borrower defense to repayment application and is revising these regulations to state the Department will notify the school within 60 days of the date of the Department's receipt of the borrower's application. Such timely notification will place the school on notice to preserve any records relevant to the borrower defense to repayment application and begin to prepare its response.

As was the case in the NPRM, these final regulations expressly state that the Department may initiate a proceeding against provisionally certified institutions to recover the amount of the loan to which the defense applies in accordance with 34 CFR part 668, subpart G. Such a provision is consistent with 34 CFR part 668, subpart G, as provisionally certified institutions are participating institutions as defined in 34 CFR 668.2 and receive title IV, Federal Student Aid.

Changes: We have revised 34 CFR 685.206 to reflect that the borrower defense standard, adjudication process, and recovery proceedings are tied to the date of first disbursement of the Direct Loan or Direct Consolidation Loan. We also clarified that the five-year limitations period on Departmental recovery actions against schools is applicable for borrower defense claims asserted as to loans first disbursed on or after July 1, 2020. The Department also revised 34 CFR 685.206(e)(16)(ii) to state the Department will notify the school within 60 days of the date of the Department's receipt of the borrower's application.

Comments: None.

Discussion: The Department proposed in the 2018 NPRM to promulgate a regulation that the school must repay the Secretary the amount of the loan which has been discharged and amounts refunded to a borrower for payments made by the borrower to the Secretary, unless the school demonstrates that the Secretary's decision to approve the defense to repayment application was clearly erroneous. Upon further consideration, this amendatory language does not align well with 34 CFR part 668, subpart G, which provides the rules and procedures for the Department to initiate a recovery proceeding against a school. Additionally, the Department stated in the preamble of the 2018 NPRM: ''The burden of proof rests with the Department, and the school has an opportunity to appeal the decision of the hearing official to the Secretary.'' [115] A clearly erroneous standard is inconsistent with the Department's intention and statement that the burden of proof lies with the Department. Accordingly, the Department is withdrawing this proposed regulation.

Changes: The Department withdraws the proposed regulation that the school must demonstrate the Secretary's decision to approve the defense to repayment application was clearly erroneous.

[115] 83 FR 37263.

Pre–Dispute Arbitration Agreements, Class Action Waivers, and Internal Dispute Processes (§§ 668.41 and 685.304)

Legal Authority and Basis for Regulating Class Action Waivers and Arbitration Agreements

Comments: A group of commenters argued that the HEA grants the Department legal authority and wide discretion to place conditions upon the receipt of title IV funding by participating schools, including restricting or prohibiting the use of pre-dispute arbitration agreements or class action waivers.

A number of commenters challenged the assertion in the 2018 NPRM that the 2016 final regulations' limitations on the use of mandatory arbitration and class action waivers were not consistent with law. These commenters disagreed with the Department's citation to the Supreme Court's decision in *Epic Systems Corp.* v. *Lewis,* 138 S. Ct. 1612 (2018) and the reference to a congressional resolution disapproving a rule published by the CFPB that would have regulated certain pre-dispute arbitration agreements. These commenters argued that neither the Supreme Court decision, nor Congress' action, has any bearing on the authority of the Department to include contractual conditions relating to arbitration as part of a program participation agreement or contract. In addition, the commenters noted that Congress did not take any action to disapprove the 2016 final regulations.

Discussion: The Department agrees with the commenters who argued that the HEA grants the Department legal authority and wide discretion to place conditions upon the receipt of title IV funds. That authority includes restricting, prohibiting, and, importantly, encouraging the use of pre-dispute arbitration agreements and class action waivers.

The Department respectfully disagrees with the commenters' assertion that the 2018 NPRM's reliance on the *Epic Systems* decision and the congressional resolution disapproving the CFPB rule were invalid. The Department cited *Epic Systems* because it is consistent with precedential decisions in Federal court in favor of establishing ''a liberal federal policy favoring arbitration agreements'' [116] and decisions against prohibitions on class action waivers.[117] Together, these three cases stand for the

[116] *CompuCredit Corp.* v. *Greenwood,* 565 U.S. 95, 98 (2012).

[117] *AT&T Mobility, LLC* v. *Concepcion,* 563 U.S. 333, 347–51 (2011).

proposition that, absent a contrary congressional mandate, Federal policy favors arbitration agreements.

Given the Court's precedents, Congress' resolution disapproving the CFPB's rule, and our reweighing of the benefits and costs regarding pre-dispute arbitration clauses and class action waivers, the Department has decided to bring its policies to align more closely with the ''liberal federal policy favoring arbitration agreements.'' The HEA provides the authority and discretion for the Department to make that policy shift. It is our view, as explained in the 2018 NPRM, that arbitration agreements and class action waivers, when coupled with student protections promoting informed decision making, preserve reasonable transparency, and cooperative dispute resolution potential that is positive for both students and institutions.

Changes: None.

General Support for Class Action Waivers, Pre-Dispute Arbitration Agreements, and Internal Dispute Processes

Comments: Many commenters expressed support for the regulations pertaining to the use of pre-dispute arbitration agreements, class action waivers, and internal dispute processes. These commenters frequently noted that arbitration and internal dispute processes can provide a path to resolution that is reasonable and fair to both the student and the school, while reducing potential costs to taxpayers. These commenters also underscored the importance of ensuring students were properly informed of their options and given the necessary information regarding how to proceed.

A group of commenters who wrote in support of the proposed regulations also suggested a change to the regulatory language to distinguish between schools that use such pre-dispute arbitration agreements and waivers for use of recreational facilities or parking lots or similar non-enrollment activities and those that require such agreements as a condition of enrollment.

Discussion: The Department appreciates the support for the proposed regulations from many of the commenters. The Department agrees that it is very important that students are properly informed of their options and given the necessary information regarding how to proceed. We also appreciate the detailed comments and suggestions on the proposed rules relating to mandatory arbitration and class action waivers.

We agree with the commenters who argued that arbitration may provide a method for borrowers and schools to address a student's concerns without the significant expense and time commitment that are common to court litigation. It is well established that alternative dispute resolution (ADR) processes like arbitration are more likely to result in savings to the parties, without reducing the parties' satisfaction with the result.[118]

We also agree with the commenters who suggested that allowing arbitration will better ensure that the school, rather than the taxpayer, will bear the cost of the school's actions. As a result, a decision in favor of the student would be the school's responsibility. In addition, depending on the particular circumstances of a claim, a student potentially could be awarded greater relief, including refunds of cash payments, when appropriate, as a result of an arbitration decision in the student's favor.

With regard to the regulatory distinction for schools that use pre-dispute arbitration agreements and waivers for the use of recreational facilities, parking lots, or other similar activities, the Department agrees with the commenter that the regulations should distinguish between schools that use pre-dispute arbitration agreements as a condition of enrollment and those that do not. The Department makes this distinction because the regulated type of agreements have a clear relationship with the educational services provided by the institution. The Department also believes that a change reflecting the commenter's suggestion would improve consistency between §§ 668.41 and 685.304.

Section 668.41(h)(1) limits arbitration disclosure requirements to cases where agreements are used as a condition of enrollment. The commenter recommended duplicating that language in § 685.304, specifically in § 685.304(a)(6)(xiii), (xiv), and (xv) replacing ''if the school'' with ''if, as a condition of enrollment, the school.'' Inclusion of the commenter's suggested language would make it clearer in § 685.304 that the agreements are related exclusively to enrollment agreements.

On the other hand, the Department's proposed language does include ''to pursue as a condition of enrollment'' in § 685.304(a)(6)(xiii); ''to enroll in the institution'' in § 685.304(a)(6)(xiv); and ''to enroll in the institution'' in § 685.304(a)(6)(xv). We believe deleting those phrases and replacing them with the suggested language would be clearer and provide consistency between §§ 668.41 and 685.304. In addition, although not specifically raised by a commenter, we add language to clarify that our changes to the entrance counseling requirements apply for loans disbursed on or after July 1, 2020. This clarifying change is consistent with the approach we are taking throughout these final regulations.

Changes: The Department adopts the changes suggested by the commenter to replace ''if the school'' with ''if, as a condition of enrollment, the school'' in § 685.304(a)(6)(xiii), (xiv), and (xv), and deleting the previously included references to enrollment in those sections. In addition, we are adding the phrase ''For loans first disbursed on or after July 1, 2020'' to the beginning of § 685.304(a)(6)(xiii), (xiv), and (xv).

General Opposition to Class Action Waivers and Pre-Dispute Arbitration Agreements

Comments: Many commenters expressed opposition to the regulations pertaining to the use of pre-dispute arbitration agreements and class action waivers. Many commenters argued that permitting participating institutions to use mandatory pre-dispute arbitration agreements and class action waivers, as part of an enrollment or other agreement, denies students their rights, including their constitutional right, to be heard in court. They further asserted that class action restrictions prevent students from working together to assert their legal rights and helps institutions ''avoid liability.'' One commenter asserted that a student does not hold the bargaining power to reject a forced arbitration clause.

Commenters stated that the Department's claim that arbitrations are more efficient and less adversarial than traditional court proceedings was ''highly dubious.''

Other commenters argued that unscrupulous schools have used mandatory arbitration, class action waiver, and internal dispute resolution provisions to discourage borrowers from raising their claims and hide evidence of illegal school conduct from the public, the result of which has been an unfair shifting of the burden of the cost of illegal conduct from schools to students and taxpayers.

A group of commenters disputed the Department's assertion that allowing schools to mandate that students sign pre-dispute arbitration agreements and class action waivers, or agree to engage internal dispute processes, helps to provide a path for borrowers to seek remedies from schools before filing a

[118] Hensler, Deborah R., ''Court-Ordered Arbitration: An Alternative View,'' *University of Chicago Legal Forum,* Volume 1990, Issue 1, Article 12, *https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1074&context=uclf.*

borrower defense claim. These commenters argued that allowing schools to require students to sign such agreements or agree to such processes limits borrowers' options in seeking redress, limits their ability to gather the types of evidence needed to support borrower defense claims, and provides protection to schools that act against the interests of their students. These commenters noted that there is usually no or very limited discovery during arbitration, and a student cannot discover documents detrimental to the school.

Another group of commenters stated that students would be at a distinct legal disadvantage against potentially large for-profit school chains that can afford high-quality legal counsel. The commenters referenced research that shows these agreements are typically used by organizations where there was already a significant power imbalance in favor of the employer or school. They further noted that the Economic Policy Institute has found that the use of mandatory arbitration among employers is much more common in low-wage workplaces and in industries that are disproportionately female and minority. Other commenters echoed these points, adding that class action waivers effectively ensure that the most economically disadvantaged will face a legal challenge skewed to the advantage of schools and deprive the Department of a vehicle that would expose the most fraudulent schools.

A commenter representing student veterans noted that veterans have a substantial interest in being able to submit complaints to Federal regulators, so that they can adequately highlight gaps or abusive practices in the market related to misrepresentations or fraud by colleges and universities and financial products, such as student loans. The commenter noted that enforcement agencies have historically relied on consumer complaints like these to bring actions against schools.

Another commenter representing veterans suggested that the regulations be amended to provide students the right to: (1) Choose to arbitrate claims once a dispute arises, and (2) exercise their constitutional right to adjudicate claims before impartial judges and juries. The commenter further suggested the Department revise the proposed regulations to include a provision from the 2016 final regulations that prohibits a school from ''compel[ing] any student to pursue a complaint based on a borrower defense claim through an internal dispute process before the student presents the complaint to an accrediting agency or government entity authorized to hear the complaint.''

One commenter noted that the U.S. Department of Defense has raised alarm about the dangers of arbitration, noting in a 2006 report that ''loan contracts to Servicemembers should not include mandatory arbitration clauses or . . . require the Servicemember to waive his or her right of recourse, such as the right to participate in a plaintiff class [action lawsuit].'' [119]

Another commenter expressed concern that schools requiring pre-dispute arbitration agreements as a condition of enrollment would not be held accountable to a Federal agency.

One commenter suggested that the Department ban the use of Federal funds for schools mandating use of arbitration or class action waiver agreements.

Several other commenters suggested that the Department did not sufficiently justify in the NPRM this change in policy. One commenter noted the Department previously stated that ''[h]ad students been able to bring class actions against'' certain specific institutions ''it is reasonable to expect that other schools would have been motivated to change their practices to avoid facing the risk of similar suits.'' [120]

Discussion: The Department understands the concerns expressed by commenters regarding the arbitration provisions of these final regulations. The Department has weighed the commenters' expressed concerns against the potential benefits of arbitration and believes that the best approach is to ensure a regulatory framework that requires that students have sufficient notice of whether the school mandates arbitration and to allow the student to decide whether to enroll at that institution or another.

The Department values the ability of students to make informed, freely chosen decisions regarding how they spend their education dollars, time, and efforts. This includes students, who may be concerned about the fairness of such a process. The Department is endeavoring to protect all students, including by ensuring those who are concerned about the fairness of such a process have the power to reject a forced arbitration clause by taking their financial aid dollars to institutions that do not mandate internal dispute processes, arbitrations, or bar class actions. As with any major life or financial decision the students will make, it is best for students to approach the choice with as much information as possible and conduct a unique-to-them, cost-benefit analysis on their own terms, weighing what is important to them and what they are willing to accept. These final regulations require that institutions play their part in keeping their potential students informed.

The Department does not believe that class action waivers and pre-dispute arbitration agreements are inherently ''unfair,'' as the commenters suggest, nor are the benefits relied upon by the Department in the 2018 NPRM ''highly dubious.'' Similarly, the use of mandatory arbitration among employers with certain worker populations does not ''effectively ensure'' that students, including minorities and females, will face a legal challenge skewed against them. It is true that arbitration proceedings do not have the same extensive discovery procedures provided for in traditional litigation in court. However, as cited by the American Bar Association, arbitration provides significant advantages over a court proceeding, including: Party control over the process; typically lower cost and shorter resolution time; flexible process; confidentiality and privacy controls; awards that are fair, final, and enforceable; qualified arbitrators with specialized knowledge and experience; and broad user satisfaction.[121] Further, in 2012, the ABA found that the median length of time from the filing of an arbitration demand to the final award in domestic, commercial cases was just 7.9 months, whereas the filing-to-disposition time in the U.S. District Court for the Southern District of New York was 33.2 months and 40.8 months in the Second Circuit Court of Appeals.[122] Arbitration does, in fact, help ''provide a path'' for borrowers to acquire relief in an efficient, cost-effective, and quicker manner than traditional litigation.

Contrary to the commenter's assertions, mandatory arbitration clauses and class action waivers do not help institutions ''avoid liability,'' but instead provide more speedy recovery and potentially greater relief to students impacted by the institutions' alleged

[119] Department of Defense, ''Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,'' August 9, 2006, *http://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.*

[120] 81 FR 39383.

[121] Sussman, Edna, and John Wilkinson, ''Benefits of Arbitration for Commercial Disputes,'' American Bar Association, March 2012, *https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/March_2012_Sussman_Wilkinson_March_5.authcheckdam.pdf.*

[122] Sussman and Wilkinson, *https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/March_2012_Sussman_Wilkinson_March_5.authcheckdam.pdf.*

conduct, as determined by an experienced legal professional as fact-finder. Rather than discouraging borrowers from raising claims and, as a result, hiding illegal conduct, arbitration provides a more cost-effective and accessible conflict resolution path than traditional court proceedings. Neither arbitration agreements nor class action waivers limit borrowers' options for redress in reporting a complaint about an institution to the Department, an accreditor, or any other governmental entity (including the CFPB, with respect to student loans). Therefore, even in the case of a mandatory arbitration agreement, the Department can still learn about illegal actions on the part of an institution.

Institutions will continue to be held accountable to the Department because the student can still file a borrower defense claim with the Department, even if the borrower receives an unfavorable arbitration decision, as the borrower submits a borrower defense to repayment claim with the Department, not the school, and the Department adjudicates the claim in accordance with its own regulatory requirements.

We have revised the regulations at § 668.41(h)(1)(i) to require, in schools' plain language disclosures regarding their pre-dispute arbitration agreements and/or class action agreements required as a condition of enrollment, a statement that the school cannot require students to limit, relinquish, or waiver their ability to pursue filing a borrower defense claim, pursuant to § 685.206(e) at any time. The Department agrees that a student must always be allowed to voice concerns or register complaints with the Department, if the borrower's allegations meet the criteria for such a claim. Unequivocally, arbitrator determinations are not binding on the Department.

The Department rejects the commenter's suggestion that it ban the use of Federal funds for schools that mandate arbitration and class action waivers. As discussed, Federal policy favors arbitration, and the Department is not convinced by the commenter's arguments to deviate here from that policy. The Department rejects the suggestion in the 2016 NPRM that class actions against certain institutions would have motivated other institutions to change their practices. In fact, it is possible that many institutions changed their approach in light of allegations made against those certain institutions, including those made by attorneys general, regardless of whether students had been able to bring class actions. Under those specific circumstances cited in the 2016 NPRM, the State of California found that the institution misrepresented job placement rates and the transferability of credits to students, advertised programs that were not offered, and failed to disclose a relationship with a preferred student loan lender.[123] Further, the Department focuses its efforts on appropriately regulating the ''good actors,'' not necessarily overcorrecting or hyper-regulating the entire sector to address outlier instances of institutional misconduct.

With respect to the Economic Policy Institute study cited by one commenter and the other commenters who echoed the concerns highlighted in the study, if the Department's final regulations would put students at a ''distinct legal disadvantage'' against schools that ''can afford high quality legal counsel,'' it is difficult to understand how this same concern would not apply to a complex, expensive court proceeding. Arbitration may frequently go further than a traditional trial in leveling out the practical, real-world legal disadvantages between the institution and the student.

The Department does not adopt the suggestion by the commenter representing student veterans. We would like to thank the commenter for bringing to our attention the Department of Defense's 2006 Report. However, that report draws its conclusions from concerns regarding predatory lending practices, including payday loans, car title loans, tax refund anticipations loans, and unsecured loans focused on the military and rent-to-own.[124] As a result, we do not believe that the conclusions that the report reaches are applicable in the context of these final regulations. Further, these final regulations do *not* require a borrower to ''waive his or her right of recourse.'' As stated repeatedly, under these final regulations, borrowers, including student veterans, who meet the eligibility requirements maintain the right to file with the Department claims for loan discharges arising from borrower defense to repayment, false certification, and closed schools.

The Department also continues to believe that the regulatory triad provides sufficient opportunities to review an institution, conduct oversight, and sanction an institution appropriately. Student complaints will continue to alert members of the triad to engage in oversight reviews.

Changes: The final regulations at § 668.41(h)(1)(i) have been revised to require, in schools' plain language disclosures regarding their pre-dispute arbitration agreements and/or class action waivers required as a condition of enrollment, a statement that a school cannot, in any way, require students to limit, relinquish, or waive their ability to pursue filing a borrower defense claim, pursuant to § 685.206(e), at any time.

Arbitration Agreements

Comments: Since most arbitration proceedings and results are confidential, several commenters noted that the regulatory change could enable a lack of transparency from schools by allowing fraudulent practices to continue even after students discovered and challenged them.

Another commenter noted that most students enter into a pre-dispute arbitration agreement before any harm occurs. As a result, these students are not able to make an informed choice about whether to surrender legal rights and remedies.

Another group of commenters recommended that the Department definitively state in the regulations that no arbitration agreement may abrogate a borrower's right to file a Federal borrower defense to repayment claim, and that the borrower may initiate such a claim. Moreover, they suggested that the time a borrower commits to an arbitration process should toll the time limit for filing a discharge claim.

One commenter asserted that arbitrators have a pecuniary incentive to rule in favor of a corporation. This commenter noted that arbitrators are paid based on the volume of cases and hours spent per case. Arbitrators thus have a strong financial incentive to rule in favor of the party on whom they depend for additional cases. This commenter further asserted that arbitration can cost more in ''upfront'' fees, as much as 3,009 percent more, than litigation. To support this point, the commenter relied upon two American Arbitration Association (AAA) studies, the CFPB's 2015 ''Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act,'' and a Public Citizen study entitled ''The Costs of Arbitration.''[125]

[123] Final Judgment, *State of California* v. *Corinthian Colleges, Inc., et. al.,* No. CGC–13–534793 (Superior Court of California, County of San Francisco). *Note:* In 2018, the California Attorney General announced a settlement with Balboa Student Loan Trust providing debt relief for students who took out private loans to attend Corinthian Colleges. Final Judgment and Permanent Injunction, *State of California* v. *Balboa Student Loan Trust,* No. BC–709870 (Superior Court of California, County of Los Angeles).

[125] American Arbitration Association, ''Consumer Arbitration Rules,'' January 1, 2016, *https://www.adr.org/sites/default/files/Consumer%20Rules.pdf;* and ''Commercial

Another commenter noted that arbitration does not usually allow for an appeal. According to this commenter, the Federal Arbitration Act allows the losing party 90 days to appeal an arbitration award on narrow grounds, and a court essentially vacates an arbitration award for a ''manifest disregard of the law.''

One commenter further suggested that the likely result of an arbitration may conflict with cohort default rate restrictions. The commenter noted that the 2018 NPRM states that ''[a]rbitration may . . . allow borrowers to obtain greater relief than they would in a consumer class action case where attorneys often benefit most.'' The commenter asserts that, if the Department believes this is the case, the practice may run counter to other regulations that prevent schools from ''[making] a payment to prevent a borrower's default on a loan'' for purposes of calculating the cohort default rate.

Discussion: The Department appreciates the commenters' concerns regarding the allowance of pre-dispute arbitration agreements in the final regulations and the effect of those agreements on transparency.

In making this policy determination, the Department considered many factors, including the commenter's concern about transparency. Our primary motivation for this policy change is to provide borrowers, who believe they have been wronged, an opportunity to obtain relief in the quickest, most efficient, most cost-effective, and most accessible manner possible. The Department acknowledges that arbitration proceedings are not public forums in the same way as traditional court proceedings.

However, those public hearings, while transparent, have serious drawbacks: Prohibitive costs, time delays, access for laypersons, among many others. Litigation can also have a serious negative impact on an institution's reputation, even when ultimately the court rules in the institution's favor. In our weighing of these factors, the Department has chosen to emphasize speedy relief and accessibility.

We also note that if the borrower is unsatisfied—due to the confidential nature of the arbitration proceeding or for any other reason—the final regulations do not preclude the borrower from pursuing other avenues for relief which they may find to be more transparent.

An eligible borrower may file a borrower defense to repayment claim regardless of any decision against a borrower in an arbitration proceeding and, under revised § 668.41(h)(1)(i), a school cannot require students to limit, relinquish, or waiver their ability to pursue filing a borrower defense claim. The Department acknowledges that the borrower may file a borrower defense to repayment application with the Department at the same as initiating the arbitration proceeding with the school.

Regarding arbitration awards conflicting with cohort default rate restrictions, payment to the student would not violate the prohibition on an institution making a payment, even if the borrower would have otherwise defaulted on the loan. If a school loses in arbitration, making a payment to a student as a result, that payment would be made to resolve a student's complaint with the school, whether through settlement or an order from the arbitrator. Additionally, the Department believes that institutions should be allowed to repay a student's loan if, for example, during the first year of study it becomes clear to the institution that the student cannot benefit from the education provided. In such circumstances, the Department does not wish to discourage the institution from repaying the student's loans.

As discussed elsewhere in this document, the Department believes that, in reweighing the issues and subsequent legal developments, these final regulations provide students with information that they need to empower themselves to understand the legal rights and available remedies they are giving up, even before a dispute arises. Upon extensive review, the Department finds that it is a much more desirable policy to incentivize informed customers to make rational decisions that they think are best for them. The Department will not dictate to students what they *ought to* want. Mandatory arbitration clauses permit relatively inexpensive and expeditious resolution of customer grievances. Considering the burdens attending litigation, arbitration adjudicates claims relatively quickly, cheaply, and, concurrently, gives the ''customers'' what they want. The underlying, well-considered justification for all this is that Department has elected not to substitute its own subjective and paternalistic judgment in place of the student's own wishes about their legal rights and remedies.

Neither an arbitration agreement nor an arbitrator's decision can abrogate a borrower's right to file a borrower defense claim. The Department notes that students who are not satisfied with the arbitrator's determination are still free to file a borrower defense claim with the Department. We have incorporated a provision, in § 668.41(h)(1), that states that an institution's disclosure to students, where an explanation of class-action waivers and mandatory pre-dispute arbitration agreements is provided, must include a statement that the borrower need not participate in any internal dispute resolution processes prior to filing a borrower defense claim.

The Department strongly disagrees with the commenter's statement that an arbitrator's pecuniary interests would taint the arbitration proceeding. The Department notes that a failure to disclose facts that a reasonable person would consider likely to affect the impartiality of the arbitrator would be a violation of the Arbitrator's Code of Ethics as well as a violation of the Uniform Arbitration Act (Revised).[126] The Code of Ethics for Arbitrators in Commercial Disputes provides that an arbitrator should: (1) Uphold the integrity and fairness of the arbitration process; (2) disclose any interest or relationship, arising at any time, likely to affect the impartiality, or which might create an appearance of partiality or bias; (3) avoid impropriety or the appearance of impropriety in communicating with the parties or their counsel; (4) conduct the proceedings fairly and diligently; (5) make decisions in a just, independent, and deliberate manner; and (6) be faithful to the relationship of trust and confidentiality inherent in the office.[127]

Further, this commenter asserted that arbitration costs more in ''upfront'' fees than litigation. Neither AAA study cited by the commenter supports this proposition. The CFPB study is the

Arbitration Rules and Mediation Procedures,'' July 1, 2016 *https://www.adr.org/sites/default/files/Commercial%20Rules.pdf;* Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act section 1028(a), CFPB, Appendix A at 43 (2015), available at *http://files.consumerfinance.gov/f/201503_cfpb_arbitration-studyreport-to-congress-2015.pdf;* Public Citizen, ''The Costs of Arbitration,'' p. 2, April 2002, available at *https://www.citizen.org/documents/ACF110A.PDF.*

[126] ''The Code of Ethics for Arbitrators in Commercial Disputes,'' American Arbitration Association, Effective March 1, 2004, *https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf;* Uniform Arbitration Act (Revised), National Conference of Commissioners on Uniform State Laws, 2000, *https://www.uniformlaws.org/viewdocument/final-act-1?CommunityKey=a0ad71d6-085f-4648-857a-e9e893ae2736&tab=librarydocuments;* Note: The Uniform Arbitration Act has been adopted in 35 jurisdictions and 14 jurisdictions have adopted substantially similar legislation.

[127] American Arbitration Association, *https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf.*

precise document that the Department relied upon, in part, in the 2016 final regulations' rationale for the pre-dispute arbitration and class action waiver provisions. Congress's resolution disapproving the CFPB final rule could be read to reaffirm the strong Federal policy in support of arbitration. As a result, we have followed Congress' direction in not following the CFPB's final rule's concepts in these regulations.

The commenter relies on a 2002 Public Citizen study for the statistic that total arbitration costs incurred by a plaintiff's use of the AAA could increase by as much as 3,009 percent as compared with filing that same claim in court.[128] This claim relies upon a comparison between the costs of initiating a lawsuit in court to the fees potentially charged to a plaintiff for initiating an arbitration. The study compares court filing fees in the Circuit Court of Cook County to fees charged by the AAA. Although it is true that court filing fees are lower than arbitration initialization fees, this calculation does not take into account the additional potential costs related to litigation, including attorney's fees and costs associated with the discovery process, fees charges by expert witnesses, travel expenses, and other miscellaneous costs.[129]

For example, the current filing fee to initiate a civil action in the Circuit Court of Cook County, Illinois is $368.[130] However, for most individuals, filing a civil action usually requires them to obtain legal services or representation, which adds significantly to the cost.[131] Under the commercial arbitration rules of the AAA, the current initial filing fee for a claim of less than $75,000 is $925.[132] Admittedly, that number is higher than the court filing fee, without counting attorney's fees. However, it is a far cry from the 3,009 percent cited by the commenter. Consequently, in reality, the problems the commenter describes are not nearly as stark as advertised.

The Department disagrees with this same commenter's assertion that ''individual rights'' would be curtailed by an arbitration's ''severely limited right to appeal.'' The Department notes that no constitutional right to appeal exists in a civil proceeding. In addition, a borrower has the right to file a borrower defense to repayment claim irrespective of the arbitrator's determination and still may have an avenue for relief through the Department's process.

A commenter suggested tolling the limitations period for a borrower defense claim for the time period in which the student and the institution are in active arbitration proceedings. The Department finds this suggestion reasonable and believes it may incentivize institutions to more quickly resolve arbitrations—providing relief to wronged borrowers more quickly—and not drag out proceedings in order to consume the current limitations period.

As a result, we adopt changes to the final regulations to toll the limitations period beginning on the date that the student files a request for arbitration and ending when the arbitrator submits a final determination to the parties.

Changes: We have added language to § 668.41(h)(1) to specify that schools must, in their plain language disclosures, state that borrowers do not need to participate in an arbitration proceeding or any internal dispute resolution process offered by the institution prior to filing a borrower defense to repayment application with the Department. This plain language disclosure must also state that any arbitration, required by a pre-dispute arbitration agreement, pauses the limitations period for filing a borrower defense to repayment application for the length of time that the arbitration proceeding is under way.

The Department also includes language in § 685.206(e)(6)(i) to state that, for loans first disbursed on or after July 1, 2020, the limitations period will be tolled for the time period beginning on the date that a written request for arbitration, in connection with a pre-dispute arbitration agreement, is filed, by either the student or the institution, and concluding on the date the arbitrator submits, in writing, a final decision, final award, or other final determination, to the parties.

Class Action Waivers

Comments: One commenter noted that class actions are an important part of resolving disputes in cases of widespread damages, especially in cases where individual damages may not be substantial or when individuals may not have the resources to seek representation for their complaints.

A group of commenters stated that the preamble to the 2018 NPRM did not adequately explain why class action waivers should be allowed, and did not reassure the public that such a waiver cannot affect a borrower's ability to file a claim or to use a class action lawsuit to help support a claim of misrepresentation. They asserted that class action lawsuits may also serve to alert the Department that a pattern of misrepresentation may be present.

Discussion: The Department appreciates the comments regarding the use of class action waivers. The commenter's concern regarding an individual's ability to acquire representation is mitigated by the Department's proposal to allow students and schools to employ internal dispute resolution options, where legal representation is not necessary, before the filing of a borrower defense claim. Further, as stated in an earlier section, nothing in these final regulations burdens a student's ability to file a borrower defense to repayment application, or any claim with a government agency, even after an arbitrator submits a finding against the student's claim.

We appreciate the commenter's concerns regarding transparency and alerting the Department to potential institutional wrongdoing. In the discussion regarding arbitration and class action waivers in the 2018 NPRM, the Department explained the benefits of our position, including allowing borrowers to obtain greater relief, reducing the expense of litigation for both students and institutions, and easing the burden on the U.S. court system.[133] We are concerned that the adjudication of class action lawsuits benefit the wrong individuals, that is,

[128] Public Citizen, ''The Costs of Arbitration,'' *https://www.citizen.org/documents/ACF110A.PDF.*

[129] *See, e.g., Epic Systems Corp.* v. *Lewis,* 138 S.Ct. 1612, 1621 (2018) (referring to the Federal Arbitration Act (FAA), 9 U.S.C. 2, and citing *Scherk* v. *Alberto-Culver Co.,* 417 U.S. 506, 511 (1974)) (''[I]n Congress's judgment arbitration had more to offer than courts [once] recognized—not least the promise of quicker, more informal, and *often cheaper* resolutions for everyone involved.'') (emphasis added). Notably, ''the virtues Congress originally saw in arbitration, its speed and simplicity and *inexpensiveness*'' should not, in the Supreme Court's view, ''be shorn away;'' as a corollary, ''arbitration [ought not to] look[ ] like the litigation'' the FAA ''displace[d].'' *Epic Systems,* 138 S.Ct. at 1623 (emphasis added); *see also AT&T Mobility LLC* v. *Concepcion,* 563 U.S. 333, 347, 348 (2011). Note: It could be argued that the calculation in the study does not take into account the many other additional potential costs of both litigation and arbitration. Regardless the cost, however, it is incontrovertible that Congress has found to favor arbitration.

[130] Clerk of the Court, Cook County, ''Court Fees and Costs 705 ILCS 105/27.2a,'' Effective January 1, 2017, *http://www.cookcountyclerkofcourt.org/Forms/pdf_files/CCG0603.pdf.*

[131] *See:* Paula Hannaford-Agor, ''Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers,'' *Voir Dire,* Spring 2013, *https://www.ncsc.org/~/media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Civil%20Justice/Measuring-cost-civil-litigation.ashx.*

[132] American Arbitration Association, ''Commercial Arbitration Rules and Mediation Procedures: Administrative Fee Schedules,'' May 1, 2018, *https://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf.*

[133] 83 FR 37245.

lawyers and not wronged students.[134] For these reasons, the Department has concluded that allowing class action waivers would benefit both institutions and students by fast-tracking dispute resolutions in a lower cost and more efficient.

Changes: None.

Plain Language Disclosures

Comments: Several commenters who supported the proposed regulations requested that we develop standardized information that schools can provide to students regarding pre-dispute arbitration and class actions. The commenters suggest that this would ensure that all schools provide students with the same or similar plain language information.

One commenter suggested a number of specific changes to the disclosure requirements, including the creation of common disclosures. The commenter recommended that the Department work in consultation with the CFPB to develop and consumer-test common, plain-language disclosures about arbitration clauses and class action waivers that would be supplemented with specific information from the school about its own processes. The commenter suggested that the disclosures should, at a minimum, note that pre-dispute arbitration clauses and class action waivers are not required at all schools of higher education and clearly state that students will not be able to exercise their right to sue their school if they have concerns about their academic experience at the school. The commenter also suggested that the Department ensure the disclosures made by schools are prominent and readily available to current and prospective students. The commenter recommended that the Department require that disclosures be listed on all pages of the school's website that include information about admissions, tuition, or financial aid; post the disclosure on the homepage itself, rather than on a sub-page, with the headline portion of the disclosure in an easily readable, prominent format; and enforce the disclosure requirements as part of its regular audit and program review processes.

This commenter also expressed concern that the regulations would not require schools to submit fulsome information about arbitration proceedings at the school. If such a requirement is not included in the final regulations, the commenter recommended the Department instead require that schools submit basic details on at least a quarterly basis that would allow the Department to know if further investigation may be necessary. Specifically, the commenter suggested that we should require schools to report the total number of arbitration proceedings on borrower defense-related topics conducted during the previous quarter and provide a high-level summary of each such proceeding, including the nature of the complaint and its resolution (including whether the student completed the arbitration proceeding; whether the student is still enrolled in the school, has graduated, or has withdrawn; and the dollar amount or other forms of relief awarded to the student in each).

Commenters expressed concern that disclosures fail to change the fact that students must accept the schools' harmful contract terms or not attend the school. They asserted that students are unlikely to appreciate the rights they are giving up. Commenters argued that disclosures are ''ineffective'' and that an ''information only'' approach was not sufficient.

Another commenter noted that requiring schools to make disclosures not just on their websites, but also ''in their marketing materials,'' is not a requirement that is included in the actual regulatory language that the Department proposed.

Discussion: The Department appreciates the many suggestions and recommendations from commenters about elements to include in disclosure materials, potential consultation partners, location of disclosures on institutional websites, as well as reported items, frequency, and submission requirements.

The Department believes that government does not know what is best for a particular student, nor can bureaucrats in Washington know what is better for a student than the student knows for herself. The Department does not believe that students who enroll at institutions that use arbitration agreements and class action waivers are forced to attend those institutions or are unaware that other postsecondary options—some of which do not require such agreements—are available.

As explained in the 2018 NPRM, we are rescinding § 685.300(g) and (h)—which required schools to submit arbitral and judicial records to the Department—in an effort, in part, to reduce the administrative burden both on institutions and on the Department. Notably, these provisions required a significant amount of paperwork to be submitted to the Department, and we no longer believe that the value of these submissions outweighs the costs and burdens associated with them. Additionally, the Department is concerned about the long-term viability of these provisions and the deleterious effects that they may have. Publicizing arbitral documents would upend the arbitration process and could lead to institutions being less open during arbitration proceedings. On the other hand, publicizing these documents would potentially subject institutions to continuous liability for conduct that it has long since corrected—an outcome the Department wishes to avoid. The provisions also would require the Department to constantly monitor these submissions and would create an onerous, unnecessary administration burden for the Department when it should be dedicating its resources in this area to the adjudication of borrower defense to repayment claims.

Similarly, the Department understands the commenter's suggestion that developing standardized information for schools to provide to students regarding pre-dispute arbitration and class action waivers would be helpful. However, the Department believes that any language developed by the Department, or any standardized form, would not sufficiently respond to each institution's unique circumstances or reflect a school's particular interests or approach, and therefore could interfere with the Department's goal of allowing borrowers as well as institutions to select the appropriate dispute resolution process.

The Department agrees that any disclosures should be easy to find and provided in clear, easy-to-understand, plain language. In the final regulations, at § 668.41(h)(1), we have added language directing institutions to include plain language disclosures in 12-point font, or the equivalent on their mobile platforms, on their admissions information web page and in the admissions section of the institution's catalogue. We believe these specified locations and manner for posting the information balance the need for notification without becoming overly burdensome.

As discussed in the previous section, the Department rejects the assertion that students are unable to appreciate the rights they are giving up and the rights they are gaining. The Department believes that students, when armed with information, should have the right and opportunity to select an institution or program that will best meet their needs, whatever those needs may be. In

[134] For more information on this topic, see: James R. Copland, *et al.,* ''Trial Lawyers, Inc. 2016,'' Manhattan Institute, *https://media4.manhattan-institute.org/sites/default/files/TLI-0116.pdf.*

addition, the Department believes that these final regulations help achieve that aim. We believe that the more detailed disclosure items in entrance counseling requirements in § 685.304, in concert with the plain language disclosures in § 668.41, will work well to provide students with the information they need to become more informed about the choices they are making, both before and after they enroll in a school.

The final regulations were revised to expressly provide that all disclosures must be in 12-point font on the institution's admissions information web page and in the admissions section of the institution's catalogue. The Department erred on the side of specifying where the disclosures should be placed to provide greater clarity and certainty in these final regulations.

Changes: The Department revised § 668.41(h)(1) to expressly state where the institution must include the requisite disclosures.

Entrance Counseling

Comments: Some commenters who supported the disclosure requirement for schools that require their students to sign pre-dispute arbitration agreements or class action waivers objected to the requirement to include this information in entrance counseling. These commenters asserted that including the information in entrance counseling would not provide any additional value.

One commenter recommended that the Department require schools to verify that students who obtained loan counseling through an interactive tool also receive an arbitration/class action waiver disclosure through a separate avenue. The commenter suggested the Department should require that schools obtain the student's signature to verify that the student received and read the loan counseling materials. This commenter further suggested that, since it already has an experiment in progress on loan counseling, the Department should also consider the lessons learned from participating schools to continually improve these requirements, and assess whether any of the participating schools have arbitration clauses or class action waivers to evaluate those schools' outcomes specifically and separately from the overall treatment group.

One commenter asserted that counseling will not remedy their concern about unequal bargaining power between the student and the institution. The commenter argued that the Department's disclosure requirements are inadequate because the proposed rule does not address the qualifications to serve as a counselor and does not specify the method of counseling.

Discussion: The Department appreciates the suggestions from commenters regarding the regulatory provision that institutions that require students to sign pre-dispute arbitration agreements or class action waivers as a condition of enrollment include information in the borrower's entrance counseling regarding the school's internal dispute and arbitration processes. We believe that students should receive entrance counseling on the school's internal dispute and arbitration processes. While we regard the inclusion of this counseling as a best practice, we will not require it through regulation. The Department will not require schools to verify that students received arbitration or class action waiver counseling through a separate tool or to obtain a student's signature to verify that the student received and read the counseling materials. We believe that the commenter's suggested options could prove too burdensome for institutions and the Department and that this level of monitoring would not necessarily be helpful or cost-effective.

In addition, the Department has no current plans to assess schools that employ arbitration clauses or class action waivers specifically or separately in any Department experimental site. The Department will take into account any lessons learned from ongoing experimental site projects and incorporate them into future rulemaking efforts, as appropriate.

The Department disagrees with the commenter's objection that including information regarding pre-dispute arbitration agreements or class action waivers in entrance counseling would not provide any additional value to the students. We believe that the value added for students, especially at § 685.304(a)(6)(xiv) and (xv), is keeping them informed about the agreements they are becoming a party to and about the internal dispute resolution options afforded to them by the school.

The Department did not propose the additional counseling requirements to remedy concerns about the relative bargaining power between the institution and the borrower, but rather to help borrowers have the information they need about pre-dispute arbitration agreements and class action waivers. The Department believes, first and foremost, that providing disclosure information to students is in their best interests and will empower students to make informed decisions about their academic choices. We believe that the requirement in § 685.304(a)(5) that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer questions, addresses some of the commenter's concerns about employee qualifications.

Changes: None.

Closed School Discharges (§ 685.214)

Option To Accept a Teach-Out Opportunity or Apply for Closed School Discharge

Comments: While sharing the Department's desire to encourage closed and closing schools to implement teach-out plans for their students, many commenters believed that borrowers enrolled at closed or closing schools should have the option to accept a teach-out plan or apply for a closed school discharge.

Another commenter stated that there are many reasons a student would opt for a discharge rather than a teach-out, including: The low quality of education provided previously; a preference not to continue; the teach-out school has a poor reputation; or the same program is available at a local community college or other institution.

Discussion: After considering the commenters' arguments, the Department now agrees that students should have the option to pursue a closed school loan discharge by submitting an application, transfer to another institution, or accept the teach-out plan offered by their institution, which may include a teach-out plan offered by the closing institution or a plan from a teach-out partner.

If the orderly closure or the teach-out plan has been approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, once a student accepts a teach-out plan offered by the institution or its partner, the student would not be eligible for a closed school loan discharge unless the school fails to materially adhere to the terms of the teach-out plan or agreement with the student.

Changes: In light of the commenter's suggestions, proposed § 685.214(c)(1)(ii) (now § 685.214(c)(2)(ii)) has been revised as follows: ''Certify that the borrower (or the student on whose behalf the parent borrowed) has not accepted the opportunity to complete, or is not continuing in, the program of study or a comparable program through either an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.''

Automatic Closed School Discharges

Comments: A number of commenters, who opposed granting automatic closed school discharges, stated that the practice is not good for the school, the government, or the taxpayer.

Several commenters supported providing automatic closed school discharges to borrowers without requiring an application, as was provided for in the 2016 final regulations. Under the 2016 final regulations, the Department would automatically discharge a borrower's loans if the borrower does not re-enroll in another school or transfer their credits within three years of their school's closure. These commenters believed that not including the automatic discharge provision in our proposed regulations after the rule had been in effect would adversely affect students already navigating the complicated school closure process. One commenter expressed the view that, without the automatic loan discharge, borrowers will find it almost impossible to have their loans discharged.

A group of commenters requested information regarding how the Department's regulatory impact analysis of its proposed rescission of the automatic closed-school discharge provision of the 2016 final regulations took into account the actual application rate of eligible students under current closed-school discharge provisions.

One commenter recommended that students that attended schools that have been found to have engaged in fraud or misrepresentation and fined by the Federal government should have a right to an automatic discharge going back at least five years from the closing of the school.

One commenter noted that the Department provided three justifications for its decision not to include an automatic discharge provision in the NPRM. In this commenter's view, none of the justifications are sufficient under the APA for this policy change.

Another commenter noted that automatic discharges would help to address the disparities that are especially detrimental to borrowers of a specific minority group and hinder their ability to obtain relief through the court system or through administrative proceedings.

Other commenters expressed the view that, in the absence of quality information or direction, rescinding the automatic discharge provisions severely limits the ability of borrowers to find a pathway to relief.

Some commenters noted that the Department stated that one of the reasons that automatic discharges might be detrimental to borrowers is that schools may withhold transcripts from borrowers who receive automatic closed school discharges. The commenters argued that this is an unsubstantiated assertion, not backed up by evidence.

One commenter stated that the Department has used flawed reasoning in stating that an unknowing borrower granted an automatic closed school discharge may lose the ability to obtain an official copy of their transcript. According to this commenter, the Department's reasoning is flawed because: Relevant case law demonstrates that withholding transcripts is unconstitutional at public colleges; such withholding could violate State law property rights; the change is unsubstantiated by any evidence of customary practice; and the Department neglected to consider less arbitrary actions to ameliorate the stated concerns.

Discussion: The Department believes that providing automatic closed school discharges to borrowers runs counter to the goals of these final regulations, which include encouraging students at closed or closing schools to complete their educational programs, either through an approved teach-out plan, or through the transfer of credits separate from a teach-out.

The Department does not agree that we do not provide quality information and direction to students who are enrolled in a closed or closing school. The Department takes its responsibility to keep students at a closed or closing school well-informed seriously, as do State authorizing bodies and accreditors, and we direct the commenter to the FSA website, where we have posted an explanation of the criteria for a closed school loan discharge, a description of the discharge process and the proper steps to take, answers to the most frequently asked questions, fact sheets on closed or closing institutions, schedules for live webinars presented by FSA, information on transfer fairs, and more. While the Department encourages schools to post the ''Loan Discharge Application: School Closure'' form on their institutional website,[135] as discussed in more detail below, we are rescinding § 668.14(b)(32), which requires closing institutions provide information about closed school discharge opportunities to their students, because it is the Department's, not the school's, burden to provide this information to students.

We do not agree that without an automatic discharge it would be almost impossible for a borrower to qualify for a closed school discharge. The application process for a closed school discharge is not overly burdensome or difficult to navigate, and it is generally not difficult for the Department to make determinations of borrower eligibility for closed school discharges based on the announcement date and enrollment information regarding the borrower.

We also do not agree with the proposal that automatic closed-school discharges be available with a look-back period of five years. We believe that five years is too long, even in the case of a school against which the Department has assessed liabilities. We believe that a five-year period would include many students who left the school for reasons completely unrelated to the school's closure or the quality of instruction provided. If a closed school engaged in misrepresentation or other fraudulent practices, and the borrower was enrolled outside the window of eligibility for a closed school discharge, the appropriate remedy for the borrower is to apply for a borrower defense discharge. Also, under exceptional circumstances, the Secretary retains the right to extend the closed school loan discharge period.

In the NPRM, the Department articulated its reasons for not including in these final regulations provisions for automatic closed school discharges, which were not part of our regulations prior to 2016.[136] The Department continues to believe that the closed school loan discharge application is the most accurate and fairest method to initiate the discharge process and make initial determinations on the potential claim.

Additionally, as discussed in the 2016 final regulations and the 2018 NPRM, the Department evaluated the potential impact of the automatic discharge provision using a data set of borrowers from schools that closed between 2008 and 2011 so re-enrollment could be evaluated. This accounted for those that filed for a closed school discharge in the window since their school's closure.

Significantly, under the APA, an agency ''must show that there are good reasons for the new policy,'' but it need not show that ''the reasons for the new policy are better than the reasons for the old one.'' [137] As detailed again

[135] ''Loan Discharge Application: School Closure,'' *https://ifap.ed.gov/dpcletters/attachments/GEN1418AttachLoanDischargeAppSchoolClosure.pdf.*

[136] 83 FR 37267–37268.

[137] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

throughout this section, the Department does not believe that including automatic closed school discharges in the regulations is the best approach when considering all of the relevant factors. The Department believes that it is incumbent upon the borrower to make the decision as to whether it is in his or her best interest to retain the credits earned at the closed school or receive a closed school loan discharge.

While there may be disagreement about whether automatic closed school loan discharge is better for borrowers than closed school loan discharges provided to students who apply for such a benefit, the Department has met the required legal standard for proposing and making this change. Given that automatic closed school loan discharges did not exist in our regulations until recently, we do not believe that this provision has become such an integral part of the program that it cannot function, and students cannot be served, without inclusion of an automatic discharge provision. As stated in the NPRM, the Department continues to believe that it is not overly burdensome for borrowers to apply for a closed school loan discharge, and that they should retain the choice of whether to apply.

The final regulations make no distinctions between borrowers based on race. We do not believe that the provisions of the final regulations will penalize any one racial group over another, as all borrowers will be subject to the same requirements.

Closed school discharge requests are rarely adjudicated through the court system and rarely require borrowers to participate in administrative proceedings. In most cases, to apply for a closed school discharge, an eligible borrower is only required to complete the closed school discharge application form and submit it to the Department.

The Department is neither requiring nor encouraging institutions to withhold a transcript in the event of a closed school loan discharge, the Department notes that institutions may have the authority, subject to certain State laws, to develop policies and outline circumstances under which a student may be denied an official transcript.[138] A student's right to a transcript under certain laws does not necessarily entitle that student to an *official* transcript.

However, the possibility of a school withholding transcripts was only cited as one reason not to provide for automatic closed school discharges. As noted above, granting automatic closed school discharges may be detrimental to schools and taxpayers since borrowers would not be required to state that they do not intend to transfer their credits to another institution to complete their program. Students could intentionally delay reenrollment at a new institution for three years in order to retain the credits already completed, but eliminate the debt associated with earning those credits. There are large costs to institutions and taxpayers when students retain the right to transfer their credits and also receive a closed school loan discharge. The Department wishes to emphasize to all borrowers that taking student loans has significant associated consequences, and that all borrowers who take loans should do so with the understanding that they are expected to repay their loans.

Finally, given that there may be tax implications or other negative effects on the borrower, while some borrowers may appreciate an automatic discharge provision, we believe that closed school loan discharges should only be available by application. Some borrowers may be satisfied with the education they received prior to the school's closure and may have left the school in order to meet certain family or work obligations, but wish to transfer those credits in the future in order to complete their program at another institution.

Changes: We are revising § 685.214(c)(3)(ii) to specify that the automatic closed school discharge provision will apply for schools that closed on or after November 1, 2013 and before July 1, 2020.

Extending the Window To Qualify From 120 Days to 180 Days

Comments: Several commenters supported extending the window of time during which a student must have withdrawn prior to a school's closure to receive a closed school discharge to 180 days. However, some commenters believed that the additional changes proposed by the Department eliminate any benefit of this change. One commenter viewed it as an ''empty gesture,'' and noted that the Secretary already has the authority to extend the window to 180 days under exceptional circumstances.

Some commenters supportive of the expansion recommended that the window be increased to at least one year.

A number of commenters requested data that the Department considered in assessing the impact of extending the eligibility period from 120 to 180 days.

Other commenters opposed the proposed expansion. These commenters believed that closed school discharge claims should be based on why the student decided to withdraw from the closing school, not when. One commenter believed that allowing borrowers to qualify for closed school discharges based on when they withdrew from the school and not why they withdrew is inconsistent with the statute. In these commenters' views, the statute expressly ties a student's eligibility for a closed school loan discharge to the school's closure. These commenters noted that if a borrower withdrew from a school for personal reasons it may be documented in the school records and they argued that since these students left the institution for reasons unrelated to the school's closure they should not qualify for the discharge. Another commenter opposed to the expansion noted that extending the window creates increased liability for taxpayers to forgive the loans of students whose withdrawal was unrelated to the closure, such as personal circumstances or academic dismissal.

Another commenter stated that if a borrower withdraws before the school closes, the borrower has not suffered any loss due to the school's closure.

A commenter, who is opposed to the expansion, noted that 20 U.S.C. 1087(c), the statute that authorizes closed school loan discharges, specifies that a borrower is eligible for a closed school loan discharge only if he or she ''is unable to complete the program in which [he or she] is enrolled due to the closure of the institution.'' This commenter claimed that the statute required a causal connection between the student's inability to complete the program and the closure of the institution. The commenter contended that the Department's current regulations conflict with section 1087(c) because the regulations allow a borrower to obtain a closed school loan discharge based on when the student withdrew and without regard to the reason for the withdrawal. The commenter noted that a borrower could apply for a closed school discharge even if the borrower voluntarily withdrew before the closure decision had been announced or even made. The commenter asserted that, by expanding the loan discharge window, the Department would likely see an increase in the frequency with which closed school discharges are granted.

One commenter noted that if the Department extends the window to 180 days, conforming changes would need to be made in associated regulations.

[138] *Note:* The Department discusses the issues regarding the withholding of transcripts in more detail in the ''Relief'' section of these Final Regulations.

Discussion: The Department thanks the commenters that supported extending the closed school discharge window to 180 days.

Although some commenters believed that other changes reduce the importance of the extension, we expect that more borrowers will qualify for closed school discharges as a result of the extension, and we believe this is an important benefit. While it is accurate that the Secretary already has the authority to extend the window, borrowers at closing schools cannot know in advance whether an extension will be provided. Specifying the window of 180 days in the regulations allows more borrowers to make better informed decisions regarding whether to continue attending the school while also allowing them to benefit from the intended purpose of the regulations, without the need for a determination as to whether exceptional circumstances exist.

The Department relied on its experience, as well as information from others involved in school closures, when proposing to extend the eligibility period for a closed school discharge. The Department has received numerous requests from state attorneys general, members of Congress, and former students and employees from closed schools to extend the look-back period beyond 120 days when a school closes. Together, this information validates the Department's belief that the longer period is needed.

In the event that a closing institution is engaging in a teach-out plan in which it provides the teach-out services directly, the 180-day look-back period will begin on the actual date of the campus closure. However, students who elect a closed school loan discharge at the beginning of the teach-out period remain eligible for a closed school loan discharge under the exceptional circumstances provision, if the teach-out is longer than 180 days. A student should not feel compelled to continue enrollment at an institution after the announcement of a teach-out simply to be sure that he or she is enrolled less than 180 days prior to the date of closure.

We do not agree with the recommendation to extend the window to a full year. The purpose of the 180-day window is to provide borrowers access to a closed school discharge even if they choose to leave a school that is clearly showing signs of a loss of quality or institutional instability 180 days prior to closing.

Based on our experience in handling closed school situations, we believe that 180 days provides an appropriate period to assume that a student has left the school due to a loss of quality. However, if we determined that a school experienced deteriorating educational quality for a longer period before it finally closed, the Secretary could use her authority, as referenced above, to increase the window of eligibility for a closed school discharge. We have made this exceptional circumstance explicit in the final regulations.

We do not agree with the commenters who contended that the Department should make a determination as to why the borrower withdrew and not grant closed school discharges to borrowers who withdrew for personal reasons prior to the school closing. We do not believe that the statute requires a determination of the motives of a borrower for leaving a school to establish the borrower's eligibility for a closed school discharge. Moreover, the Department could not accurately make such determinations. Personal reasons, by their very nature, are individualized. They are not likely to be documented in a consistent, reliable manner and it is not always clear what factors ultimately lead anyone to take action.

We disagree with some commenters' analysis of the requirements in 20 U.S.C. 1087(c). The HEA provides that a borrower may receive a closed school discharge if the borrower ''is unable to complete the program in which the student is enrolled due to the closure of the institution'' (sections 454(g)(1) and 437(c)(1)), but does not establish a period prior to the closure of the school during which a borrower may withdraw and still qualify for a closed school discharge. The Department has long interpreted the statute to allow discharge for students who withdrew a short time before a school closure, in recognition that a precipitous closure may be preceded by degradation in academic quality or student services. These final regulations are in line with the Department's previous interpretations.

The Department disagrees with the commenter who stated that a borrower who withdraws from a school that is on the verge of closing has not suffered any loss due to the school's closure. As noted, a closing school's educational environment may deteriorate, especially as the remaining student population contracts. A borrower who withdraws from a school prior to the actual closure date due to deteriorating conditions has suffered a loss, whether monetary, time, or other hardship. When the borrower enrolled in the school, they had every reason to expect the school to remain in existence for the duration of their education program. Had the borrower known that the school would close before they completed the educational program, the borrower would most likely have enrolled at a different school.

Although the expansion of the window to 180 days may result in greater costs to taxpayers, we believe that any increased cost is more than offset by the benefit that it provides to borrowers who, through no fault of their own, find that they have incurred education debt for attendance at a school that is closing. In addition, the 180-day period covers any gaps between the spring and fall semesters, since the previous 120-day period could put students in a position of exceeding that window simply for not enrolling in summer classes. We believe that the totality of these regulations will encourage borrowers at closed or closing schools to complete their education program through teach-outs, rather than to take the closed school discharge. This is the Department's preferred policy because it incentivizes and prioritizes educational attainment.

Changes: Because we are extending the window to 180 days, applicable to loans first disbursed on or after July 1, 2020, we are adding a new § 685.214(g) and have made conforming changes to § 685.214(f)(1).

Exceptional Circumstances

Comments: Several commenters recommended that the Department retain the existing list of exceptional circumstances under which it can expand the eligibility window. These commenters believed that the Department should not tie its own hands and foreclose its future ability to assist students dealing with an abrupt school closure.

One commenter noted that the Department provided no rationale for the change, except in the case of the reference to a loss of accreditation. The commenter stated that there was no analysis of how this provision would interact with State laws. The commenter also believed that the proposed language on accreditation was unnecessarily detailed and could accidentally exclude some circumstances, such as voluntary withdrawal from accreditation without closure. The commenter believed that the elimination of the example of the institution's discontinuation of the majority of its programs would encourage institutions to keep open one small program to avoid paying for closed school discharges.

Another commenter stated that the existing extenuating circumstance language provides clear indicators that help to determine what would rise to

the level of an exceptional circumstance. The commenter noted that the regulation is already structured as a non-exhaustive list and stated that the Department provided no justification for removing some of the items from the list. This commenter also recommended, in addition to restoring the list of exceptional circumstances that is in the current regulations, that the Department add the institution's loss of title IV eligibility to the list of exceptional circumstances. The commenter stated that, much like the loss of accreditation, the loss of Federal financial aid eligibility indicates a severe circumstance outside of closure that can severely affect a student's ability to attend the institution.

Another commenter stated that, if the Department intends to make these types of changes, it must make clear to the public that it is doing so and must also provide a good reason for the change.

Another commenter supported the proposal to narrow the list of the exceptional circumstances under which the Department can expand the window beyond 180 days.

Discussion: We thank the commenter who supported narrowing the list of exceptional circumstances.

The Department appreciates the opportunity to clarify our reasoning for the changes proposed in the NPRM to the non-exhaustive list of exceptional circumstances for extending the closed school discharge window. The Department proposed removing the reference in the existing list of extenuating circumstances to a school discontinuing the majority of its academic programs because closed school discharges are based on a school closing, not on the school discontinuing some academic programs, but continuing to offer others. We proposed removing the reference to findings by a State or Federal government agency that the institution violated State or Federal law because such violations do not necessarily lead to closure or have any bearing on why a school has closed.

The proposed revisions to the language regarding accreditation and State authorization were intended to provide more clarity and useful detail to these examples. The accreditation example does not address the situation of a school voluntarily withdrawing from accreditation because we do not believe that situation occurs frequently enough to warrant a mention in this list.

Upon further consideration, we agree with the recommendation made by the commenter to add the loss of title IV eligibility as an exceptional circumstance. The Department adopts the commenter's reasoning that the loss of Federal financial aid eligibility in conjunction with an impending school closure indicates a severe circumstance that can severely affect a student's ability to attend the institution.

The Department included an exceptional circumstance where the teach-out of the student's educational program exceeds the 180-day look back period. The Department seeks to avoid the perverse outcome of requiring a student to enroll in a longer-than-180-days teach-out that they did not want, in order to reach the 180-day look back date.

As noted above, the list remains non-exhaustive, so removing these items does not tie the hands of the Secretary in future situations in the event of a school closure. We believe that the list provides sufficient indicators for future determinations of when ''exceptional circumstances'' occur.

Changes: The non-exclusive list of exceptional circumstances in § 685.214(c)(1)(i)(B) (now redesignated § 685.214(c)(2)(i)(B)) has been revised to include: ''the revocation or withdrawal by an accrediting agency of the school's institutional accreditation; the revocation or withdrawal by the State authorization or licensing authority of the school's authorization or license to operate or to award academic credentials in the State; the termination by the Department of the school's participation in a title IV, HEA program; or the teach-out of the student's educational program exceeds the 180-day look-back period for a closed school loan discharge.''

Imposition of Retroactive Requirements

Comments: A group of commenters contended that the teach-out proposal would impermissibly impose retroactive requirements on current and past borrowers. These commenters noted that there is no time limit on when a borrower may submit a closed school discharge claim and argued that it would be legally impermissible to apply the new requirements to loans made before the effective date of the regulations. These commenters also noted that the Department has notified current borrowers of the existing requirement and argued that there is no legal basis to change those requirements for those borrowers. These commenters also contended that the retroactivity issue is particularly applicable to the FFEL program in which no new loans have been made since 2010.

Discussion: We appreciate the commenters' concerns. We agree that the changes to the closed school discharge regulations, including those pertaining to teach-outs, should not apply to current loans. The NPRM did not specify an effective date for those changes, but we acknowledge that our proposal caused some confusion by including changes to the FFEL regulations in this area. The changes to the closed school discharge regulations will apply only to new loans made after the effective date of these regulations: July 1, 2020. Since no new loans are being made under the FFEL or Perkins Loan programs and the outstanding loans in those programs will not be affected by these changes, we are not making changes to those program regulations in this area.

Changes: We have revised § 685.214(c) and (f) and added a new paragraph (g) to specify that the changes being made to the closed school discharge regulation applies only to loans first disbursed on or after July 1, 2020. We also are not making the revisions we proposed in the NPRM to the FFEL (§ 682.402) and Perkins (§ 674.33) closed school discharge regulations.

Teach-Out Plans, Orderly Closures, and Transfer of Credits

Comments: Several commenters supported the proposed change to the regulations that would require borrowers applying for a closed school discharge to certify that the school did not provide the borrower an opportunity to complete their program of study through a teach-out plan approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

Many commenters also expressed strong support for the proposed revisions to the closed school discharge regulations that would provide that a borrower would qualify for a closed school discharge if a school failed to meet the material terms of the teach-out plan approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, such that the borrower was unable to complete the program of study in which they were enrolled.

Some commenters expressed concerns that accreditation agency standards for teach-out agreements are not uniform.

One commenter noted that this proposal would encourage schools to follow their State or accreditor's teach-out process. This commenter stated that students, and taxpayers alike, are best protected from financial harm when schools provide the best path for students to complete their program of study rather than abruptly closing their doors.

Another commenter noted that the proposed regulations would provide a

strong incentive for schools to provide students with an opportunity to complete their program through an approved teach-out that takes place at the closing institution or at another school. Another commenter suggested that without the teach-out ''safe harbor'' rule, borrowers would be encouraged to submit fraudulent closed school discharge claims. This commenter argued that schools that are closing make a considerable commitment to teach out their students and that since the borrower will have an opportunity to leave the school with their planned credential, there is no need for a loan discharge in these cases.

One commenter supported the proposal to require borrowers applying for a closed school discharge to certify that the school did not provide the borrower with an opportunity to complete their program of study, regardless of whether the student took advantage of the teach-out. This commenter recommended that the Department obtain information on approved teach-out plans from accreditors and State authorizing agencies and use this information to deny discharges to students who attended those schools, instead of relying on self-certification.

One commenter argued that the proposed regulations would create an incentive for the orderly teach out of a school that is planning to close, thus offering an important protection for students, taxpayers, and schools.

Another commenter argued in support of the proposed regulations that the Department should not penalize a school that creates a teach-out program to help current students finish a program of study. In this commenter's view, if a school puts in the effort to establish a teach-out agreement, it shows that the school ultimately has their students' best interests at heart by giving them the opportunity to complete their program of study.

Another commenter noted that the proposed changes would be consistent with existing regulations, which do not allow students who transferred credits from a closed school to another school and who finished the program elsewhere to qualify for a closed school loan discharge.

Another commenter stated that the proposed regulations are consistent with the statutory requirements in 20 U.S.C. 1087(c), the section of the statute that authorizes closed school loan discharges, if the borrower ''is unable to complete the program in which [he or she] is enrolled due to the closure of the institution.'' In this commenter's view, the statute demands a causal connection between the student's inability to complete the program of study and the institution's closure. A student's failure to complete must be ''due to'' the closure.

Several commenters contended that in a fully approved teach-out plan, faculty and staff often go above and beyond to serve students through completion of their program. These commenters argued that this considerable commitment by the school toward its students, and the fact the student will leave with his or her planned credential, means there is no need for a loan discharge in these cases.

Several commenters opposed the proposed changes to the closed school loan discharge provisions, as well. While one of these commenters agreed that more schools should offer teach-out plans, the commenter also stated that the quality of teach-out plans varies widely and the process for determining an acceptable teach-out plan lacks rigor and consistency. The commenter contended that the Department acknowledged this inconsistency and lack of quality in its announcement that it intended to start a negotiated rulemaking process concerning teach-out plans. The commenter also noted that, for some students, completing the credential through a teach-out plan may be undesirable.

Many commenters stated that students who attended a closed school have a right to have their debt cancelled, even if the closed school offers an option to enroll at another school or location. The commenters stated that borrowers at closed schools should not be forced to transfer to another school.

One commenter recommended maintaining the current policy on closed school discharges, or, alternatively, establishing standards for degree program comparability in teach outs. The commenter recommended that the regulations specify such factors as program length, costs and aid, programmatic accreditation, and quality to determine program comparability.

One commenter stated that the proposed changes would close the window on many adult learners that do not have the money to transfer to another program.

One commenter opposed to the proposed changes to the closed school discharge requirements relating to teach outs stated that students may be wary of a teach-out option if it is being provided by a school that is about to close. These students may be uncertain of the value of participating in the teach-out, compared to the value of starting fresh elsewhere.

One commenter stated that the proposed regulations ignore the fact that a teach-out program may not meet a student's needs, or may not properly match their program of study, or may be at a school that isn't realistic for a student to attend. As another commenter noted, there are any number of reasons a student will choose a particular educational program. Some of those reasons may be related to the school's location and class schedule, or other factors relevant to that student's unique situation. In addition, there is no guarantee that the teach-out program is a high-quality program. The commenter noted that the student may be jumping from one bad program to another at the behest of the failing institution.

Another commenter opposed to the proposed changes argued that under the proposed regulations borrowers would be treated differently in different States, as States and accreditors must approve teach-out plans. The commenter believed that this is inconsistent with the rationale used in the NPRM for adopting a single Federal evidentiary standard for borrower defense claims. The commenter noted that accrediting agencies and States have complex and conflicting policies, which would result in inconsistent results based on geography, quality, and other factors. The commenter noted that the proposed regulations assume that teach outs are always the best option, but expressed the view that this may not be true in all cases, especially at the beginning of a long program. The commenter noted that there may be problems with teach outs such as exclusions, potential additional cost, geographic proximity, record keeping and transcripts, and transfer of student aid. The commenter noted that teach outs are non-binding and institutions may renege on them, and teach-out agreements may conflict with State laws, such as those regarding tuition recovery funds. As noted by another commenter, a teach out might involve travel or other constraints that make it impractical for some students. The commenter recommended that the Department take into consideration that students choose programs for reasons other than academics, such as compatibility with work or family obligations.

Another commenter expressed the view that the proposed regulations would eliminate the path to loan discharge when there is a teach out available, regardless of whether the opportunity was accessible, in the same mode of instruction, or of comparable quality, and would encourage predatory institutions to submit sub-par teach-out opportunities.

Another commenter took issue with the statement in the NPRM that ''borrowers may be better served by completing their programs . . . than by having their loans forgiven.'' The commenter stated that the Department provided no evidence to support that assertion. In the commenter's view, this type of decision-making does not qualify as a ''good reason'' under the APA for changing the closed school discharge eligibility requirements.

Another commenter opposed the proposed changes to the closed school discharge regulations to deny loan discharges to those who were offered a teach-out—even if they did not complete it. The commenter stated that the statutory language creating closed school discharges indicates that Congress intended to make the discharges available to all students in a program. Specifically, 20 U.S.C. 1087(c) reads that ''if a borrower . . . is unable to complete the program in which such student is enrolled due to the closure of the institution . . . then the Secretary shall discharge the borrower's liability on the loan.'' The statutory language does not refer to completing another, substantially similar, program; nor does it refer to a program offered by another institution, in another modality, or in another location. In the commenter's view, the Department's proposal to deny discharges to anyone who had the opportunity to complete a program is a subversion of congressional intent and the plain reading of the legislative text.

The commenter also noted that the Department's proposed changes run counter to its own longstanding interpretation that the statute permitting closed school loan discharges applies to all borrowers from the institution. While teach-out plans are required from closing institutions, the Department has previously recognized that a teach-out may not be what a student signed up for, and may differ in key ways from the original program. To respect students' choices and ensure they are able to make the choice that's right for them, the regulations have allowed students to either transfer their credits (or accept a teach-out) or to receive a loan discharge.

The commenter expressed the view that the Department is proposing to eliminate that choice in an attempt to reduce liabilities for closing institutions. The commenter noted that the Department expects this provision, along with the elimination of automatic discharges, to reduce closed school discharges by 65 percent.

The commenter noted several problems with teach-out plans in the current system: In teach-out arrangements, students are not always able to transfer all of their credits or pick up their programs exactly where they left off at the closing institution; some teach-out plans offer only impractical or sub-par options for students; accrediting agency policies relating to teach-out agreements differ across agencies, particularly where teach-out agreements are concerned; none of the accrediting agencies expressly require in their standards that institutions arrange teach outs in the same modality as the original program; it can be difficult to find teach-out arrangements for some niche programs, so some students may fall through the cracks in establishing teach-out agreements; and few accreditors list standards beyond geography, costs, and program type that they consider in approving or rejecting proposed teach-out arrangements, although some regional accreditors require that teach-outs be offered by institutions with regional accreditation only.

The commenter expressed the view that the result of the proposed regulations would be to create a strong incentive for institutions to establish teach-out agreements, without much consideration for the quality of the teach out or how well it will serve the students affected by the institution's closure.

The commenter also noted that State policies vary widely on school closures. The Department provided no discussion on the question of when State authorizers require institutions to get their sign-off on teach-out plans.

The commenter stated that one State's efforts to require teach-out plans from institutions and ensure other protections are in place before colleges close received push-back from institutions of higher education, and that organizations representing States have said they are not aware of other States requiring these provisions.

Commenters requested the reason behind why the Department stated that accreditors will only approve adequate teach-out plans. In addition, the commenter requested clarification as to whether the Department would foreclose closed-school discharges to students who were offered an online-only teach out. The commenter asked what percentage of schools that closed in the past five years offered a teach-out plan and whether the Department has considered the impact of the proposed regulations in relation to this information. The commenter also requested whether the Department would allow a borrower to establish eligibility for a closed school discharge when the borrower's individual circumstances precluded them from completing their program of study through the teach-out.

The commenter stated that some accreditors require teach-out plans prior to a school closing if the school is in financial straits. However, such teach-out plans may only offer an initial suggestion of which institutions the closing college might reach an agreement with—not a signed contract with those institutions. Such a plan does not constitute a formal agreement with another institution to take over in the event that the institution cannot or will not teach out its own students. Furthermore, it does not mean the teach-out will be executed according to the plan in the event of actual closure.

The commenter suggested that, if the Department retains this proposal, teach-out agreements would be a more appropriate measure than teach-out plans for institutions not remaining open long enough to teach out their own students, since the plans may be outdated or uncertain. The commenter also recommended that the Department should require that the teach-out be the same in its implementation as it was in the accreditor's approval of the plan, ensuring that the letter of the plan is followed through, since the documents on file with the accreditor may not always comport with on-the-ground realities.

Finally, the commenter proposed that, if the Department does not revise these proposed regulations, the Department clarify that they only apply to schools closing after the effective date of the regulations, July 1, 2020.

Another commenter recommended that the proposed ''teach out'' changes only apply for those closing schools whose graduates consistently find careers in their fields of study. In this commenter's view, letting a school continue to provide education that is not going to be applicable to the borrower's career goals is a waste of the borrower's time and money, and he or she should be permitted to file for full discharge of the loans.

Another commenter noted that there are times where the approved teach-out schools are out-of-State, the ''teach-out'' school is at risk of closing, the other school has a poor reputation, or the school with the approved teach-out is too far away from the closing school.

Discussion: The Department agrees with commenters that teach-out plan requirements are not uniform among accreditors and we, through the recent negotiated rulemaking effort, are taking steps to improve and modernize the requirements relating to teach-out plans and to better coordinate information

between the Department and accreditors.

We acknowledge that even a well-planned and well-executed teach out may not be ideal for every student. Issues such as modality, location, and compatibility with work and family situations may make it difficult for a student in an education program to participate in a teach-out offered by a closing or closed school. Therefore, the Department has revised its proposal to allow a student to choose either the teach-out or the closed school discharge. These final regulations do not disqualify a borrower who has declined to participate in a teach out from receiving a closed school discharge. However, to avoid circumstances where students complete their program and apply for discharge, the borrower is required to certify that they did not complete the program of study, or a comparable program, through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school.

The Department does not have the authority to regulate the quality of academic instruction, nor does it have the authority to regulate each detail of teach-out plans or agreements. We do, however, work together as a member of the regulatory triad and believe that the accreditor will approve plans that will serve students appropriately in the event of a closure. The Department can hold accreditors accountable for ensuring that teach-out plans provide acceptable options and opportunities for students.

The Department does not believe that an online only teach-out is an equivalent option, if the original program was not taught exclusively via distance education. While we believe this could be an available option that may be suitable for some students, it is insufficient for this to be the only teach-out option to be offered to students currently enrolled in ground-based programs. Similarly, it is not sufficient for a teach-out plan to include only ground-based courses in the event that it is an online institution that is engaged in a teach-out.

The Department does not generally require schools to submit teach-out plans to us since accreditors and State authorizing bodies are charged with reviewing and approving teach-out plans. However, the Department reserves the right to review any teach-out plan that has been approved by the institution's accreditor and State authorizing body.

Under these final regulations, the Department allows the borrower to choose between the teach-out (or transfer) and the closed school discharge. As stated elsewhere, we believe that in many instances, and in particular among students close to the end of their program, the student may be best served by completing their academic program at the closing institution or a teach-out partner institution. For students with less than 25 percent of the program remaining to complete, a teach-out that takes place at the closing institution may offer the most rapid and cost-effective route to degree completion. Moreover, while accreditors generally require a student to complete at least 25 percent of their program at an institution that awards a credential, many accreditors waive the 25 percent rule for students who are enrolled in a formal teach-out agreement with another institution.

One commenter challenged the Department's assertion that borrowers may be better served by completing their programs than by having their loans forgiven. We stand by this assertion. In our view, obtaining the education credential that the borrower wanted to pursue is generally preferable to foregoing credential completion or being required to start a program over at another institution. Disruptions in a student's time in school can have devastating consequences and, too often, lead to the student abandoning their educational pursuit.[139] It is better to create a path for students to finish their degree, certificate, or program, rather than create perverse incentives to stop their schooling, with only a plan for an indeterminate, future starting date.

Our goal is not to reduce the number of closed school discharges awarded through these regulations or reduce the liability for closing institutions, as one commenter suggested. Rather, it is to provide students enrolled at a closing or closed school as many options as possible for completing their program. The Department seeks to encourage institutions to provide approved teach-out offerings rather than closing precipitously.

Regarding the commenters' other concerns about teach-out plans, we believe that the revised language in these final regulations, consistent with the Department's long-standing interpretation of 20 U.S.C. 1087(c), addresses those concerns. Since borrowers will have a choice of participating in the teach out or receiving a closed school discharge, a borrower who believes, due to the closure of the institution, that the teach out offered by the school will not meet his or her needs, may decline the teach out and still qualify for a closed school discharge.

Changes: We have revised our proposed changes (now reflected in § 685.214(c)(2)(ii)) to specify that a borrower is eligible for a closed school discharge if the borrower opts not to accept the opportunity to complete the borrower's program of study pursuant to a teach-out plan or agreement, as approved by the school's accrediting agency and, if applicable, the school's State authorizing agency. As discussed above, we are no longer making changes to the regulations regarding FFEL or Perkins loans, so parallel changes are no longer necessary to § 674.33 or § 682.402.

Departmental Review of Guaranty Agency Denial of a Closed School Discharge Request

Comments: Commenters supported allowing a borrower the opportunity for the Department to review a closed school discharge claim, which was denied by the guaranty agency, to provide a more complete review of the claim for the closed school discharge. One commenter suggested that this secondary review process would result in greater uniformity of the processing of closed school discharge applications. Another commenter provided detailed proposed regulatory language in support of this change.

Discussion: We thank the commenters for their support for the proposed changes in the NPRM and their suggestions. However, since no new loans are being made under the FFEL program, plus the facts that the outstanding FFEL loans will not be affected by these changes and that the changes proposed regarding Departmental review of guaranty agencies' denials were also included in the 2016 regulations, we will not be making changes to the FFEL program regulations in this area.

Changes: None.

Additional Recommendations

Comments: One commenter recommended that, before granting a closed school discharge, the Department notify the school about the proposed discharge, the basis for the proposed discharge, and provide the school with a copy of the application and supporting documentation submitted to the Department. Under this proposal, the

[139] *See:* Park, Toby J., ''Working Hard for the Degree: An Event History Analysis of the Impact of Working While Simultaneously Enrolled,'' April 2012, Presented at the American Educational Research Association's Annual Conference, Vancouver, BC, available at: *https://www.insidehighered.com/sites/default/server_files/files/PARK_WORKING.pdf.*

school would have 60 days to submit a response and information to the Secretary addressing the closed school discharge claim. The commenter also suggested that the Department should provide the borrower with a copy of any response and information submitted by the school. Another commenter also suggested that the school have an opportunity to provide information to the Department that might affect the decision of whether to grant a closed school discharge. A third commenter stated that the Department would not be able to make an accurate closed school discharge determination without information from by the school.

Discussion: The Department disagrees with the commenters' proposal. The determining factors that establish a borrower's eligibility for a closed school discharge are limited to whether the borrower was in attendance at the school at the time it closed or withdrew within the applicable number of days of the date the school closed, and the borrower did not complete his or her program or a comparable program at another institution. For most borrowers in these situations, the Department already has information about the school's closure date and has access to information about whether the borrower was in attendance or had recently withdrawn. The Department has made decisions on these claims for more than 20 years without having a formal submission process for additional information from the school, and we do not have any evidence that those decisions were incorrect. Accordingly, we do not believe that we need to establish a process for schools to review the borrower's information and respond.

Changes: None.

Comments: One commenter noted that the 2016 final regulations established requirements that closing institutions provide information about closed school discharge opportunities to their students. The commenter recommended that the Department include these requirements in these regulations, citing the concerns the Department raised in the 2016 final regulations that potentially eligible borrowers may be unaware of their possible eligibility for closed school discharges because of a lack of outreach and information about available relief.

Discussion: The Department appreciates the commenter's concerns regarding the removal of the requirements included in § 668.14(b)(32). As stated above in the Automatic Closed School Discharges section, the Department provides information on our website to students regarding the closed school loan discharge process, frequently asked questions, fact sheets, webinars, and transfer fairs.

The Department is rescinding § 668.14(b)(32) because we concluded that it is the Department's, not the school's, responsibility to provide this information to students. The Department believes that the borrower will have the best access to accurate, up-to-date and complete information by obtaining it from the Department's website, or the websites of accreditors and state authorizing bodies. Unlike institutional websites that may cease to operate when a school closes, the Department's website will continue to provide students with updated information.

Even so, we encourage schools to post the Department's closed school loan discharge application on their institutional website and to direct their students to the FSA website for further information.

Changes: None.

Comments: One commenter had specific concerns about the timeframe for appeal of closed school loan discharge determinations, whether appeal is an option for non-defaulted borrowers, and capitalization of interest. The commenter also raised concerns about PLUS loans and closed school discharges as they pertain to PLUS loans. The commenter recommended we specify that the reference to a borrower making a monetary claim with a third party refers to both the student and the parent in the case of a parent PLUS loan.

One commenter expressed a concern that the proposed closed school regulations would allow even the most financially unstable institutions on the brink of closure to continue benefitting from Federal student aid.

One commenter expressed the view that the final regulations should clarify that students are not eligible for closed school discharge when their college merges with another college, changes locations, or undergoes a change in ownership or a change in control. The commenter cited one example of a case in which a college was engaged in internal restructuring that required a change in OPEID numbers. According to the commenter, the school was required to offer students a closed school discharge despite offering the same program to students under the new OPEID number. In this commenter's view, the Department should clarify that internal restructurings do not result in a closed school discharge.

One commenter recommended that the Department look closely at borrower defense claims regarding institutions that have recently closed. The commenter asserts that many of these claims are closed school discharge claims disguised as borrower defense claims.

One commenter recommended that the Department designate the closed school discharge regulations for early implementation to incentivize institutions that are currently considering institutional or location closures to provide a teach-out for their students.

One commenter stated that if a school goes ''out of business'' or goes bankrupt, the former students should have reduced loan repayment obligations, especially for loans made by the school.

One commenter noted that under both the current and proposed regulations, the Department is required to identify any Direct Loan or Perkins Loan borrower ''who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days prior to the closure date'' and to ''mail the borrower a closed school discharge application and an explanation of the qualifications and procedures for obtaining a discharge.'' FFEL regulations similarly require guaranty agencies, upon the Department's determination that a school has closed, to identify potentially eligible borrowers and mail them a discharge application with instructions and eligibility criteria. This commenter asserts that the Department has not fulfilled its duty to provide notices and application forms to all potentially eligible borrowers, and that many borrowers whose schools have closed remain unaware of their eligibility. The commenter contends that applying the proposed changes to the closed school discharge regulations to such borrowers would unfairly harm them by making many of them newly ineligible to discharge their loans without ever having received notice of their eligibility.

Discussion: The Department does not believe that it is necessary to create an appeal process for borrowers making claims for closed school discharges. In most cases, closed school discharge decisions are based solely on whether the borrower was attending the school when it closed or shortly before and did the borrower choose to complete their program through a teach-out or transfer of credits. If the borrower's claim is denied but they have additional supporting information they can always submit a new claim and still receive full relief. Thus, there is no reason for a new formal appeal process.

We do not share the commenter's concern that the rules relating to Parent

PLUS loan borrowers are unclear. We believe that our current language makes it clear that Parent PLUS loan borrowers must satisfy the same requirements for a discharge as student borrowers except that the Department considers the date the student stopped attending the school and whether the student completed their program of study.

We disagree that the final regulations would have any impact on a school's eligibility to participate in the student financial aid programs. If a school stops offering educational programs, it loses its eligibility to participate in the title IV student financial aid programs for other reasons. However, if a school closes one location and otherwise keeps offering educational programs, the continuing locations would remain eligible to participate. Depending upon how far the closing or closed campus is from the remaining campuses of the institution, or in the case of a campus relocation, the distance between the old and new location, the State or the accreditor may make a determination of whether this would be classified as a school closure. For example, in some states a new or continuing campus must be within a certain travel distance of the closing or moving campus, or must be on the same mass transit line, in order for the move to a new campus or merger with an existing campus to not be classified as a school closure.

The Department has not proposed modifying the definition of ''closed school.'' Generally speaking, the merger of campuses, changes in campus location changes of ownership would be not be considered closed schools and students enrolled at those institutions would not generally be eligible for closed school loan discharge.

We do not believe that a school's closure or bankruptcy should automatically reduce its' former students' loan repayment obligations. If those students qualify for a closed school discharge, or have a borrower defense to repayment, they can apply for that relief individually. The Department has no authority to determine whether or not a student remains obligated to repay private loans, including those issued by the institution, in the event that an institution closes.

If a borrower at a school that has closed may qualify for either a closed school discharge or a borrower defense discharge, we encourage the borrower to apply for a closed school discharge. The closed school discharge application process is generally less burdensome than the borrower defense application process since in the case of the closed school, the evidence of the closure is clear and apparent. We do not believe there is a strong incentive for a borrower who may qualify for a closed school discharge to apply for a borrower defense discharge instead.

The Department thanks the commenter for the suggestion regarding early implementation of the closed school discharge regulatory provisions. We reviewed the provisions and our procedures to determine if early implementation was possible. As a result, we are limiting our early implementation of these final regulations to those expressly listed in the ''Implementation Date of These Regulations'' section at the beginning of this document.

Changes: None.

Comments: None.

Discussion: In the discharge procedures for loans first disbursed on or after July 1, 2020, the Department makes a technical amendment in § 685.214(g)(6) to state that if the borrower does not qualify for a closed school discharge, the Department resumes collection. This technical amendment reflects the Department's longstanding practice to resume collection if a borrower's closed school discharge application is denied.

Changes: The Department makes a technical amendment to § 685.214(g)(6) to state that if the borrower does not qualify for a closed school discharge, the Department resumes collection.

False Certification Discharges

Application Process

Comments: One commenter recommended that the Department remove the new requirement that a borrower submit a ''completed'' application in order to obtain a false certification loan discharge, and that we instead retain the language in the 2016 final regulations that required a borrower to submit an application in order to qualify for a false certification discharge. Another commenter agreed with the recommendation to remove ''completed,'' at least until the false certification discharge application is tested and revised to reduce inadvertent borrower errors. The commenter believed that by requiring a completed application within 60 days of suspending collections, the Department, guaranty agencies, and servicers would lack the discretion to notify the borrower regarding inadvertent errors and allow the borrower additional time to submit a corrected application while collection remains suspended.

One commenter recommended that the Department provide a school with written notice that a student has filed a discharge application and give the school the opportunity to respond. Another commenter also supported this proposal and urged the Department to provide the institution with a copy of the application and supporting information and afford the school a reasonable period of time to respond, such as 60 days. Under this proposal, the student would be provided a copy of the school's response and supporting documentation.

One commenter expressed the view that the proposed regulatory changes related to false certification discharges will result in borrower confusion about their false certification discharge applications. The commenter objected to the Department's proposal to remove language included in the 2016 final regulations that would require the Secretary to issue a decision that explains the reasons for any adverse determination on the application, describe the evidence on which the decision was made, and provide the borrower, upon request, copies of the evidence. The 2016 final regulations also provide that the Secretary considers any response and additional information from the borrower and notifies the borrower whether the determination has changed. In the commenter's view, this language would offer borrowers an opportunity to respond and submit additional evidence that could prove critical both to the approval of a borrower's application and to the Department's oversight of institutional misconduct.

Discussion: These final regulations require the borrower to submit a ''completed'' application because an incomplete application—such as an application without a signature or an application with missing information—does not provide all the information necessary for the Department, guaranty agency, or servicer to make a decision on the claim, which will result in the application being returned to the borrower as incomplete. Therefore, we will retain the term ''completed'' in the final regulations.

Requiring the borrower to submit a ''completed'' application in the regulations does not preclude the Department from contacting the borrower and asking the borrower to provide the missing information. Additionally, we believe sixty days from the day that the Secretary suspended collection efforts is a reasonable period of time for a borrower to complete the application, and for any necessary follow-up communication between the borrower and the Department.

We disagree with the commenters' proposal that the Department give a

school an opportunity to respond to the borrower's false certification discharge application. The information and documentation that the Department routinely collects through the false certification discharge application process is typically sufficient for the Department to make a determination of eligibility. Further, while information is generally not required from the school, the Department has the discretion to contact the school to request additional information. In addition to any relevant information that a school may provide in response to a request from the Department, the final regulations provide that the Secretary may determine whether to grant a request for discharge by reviewing the application in light of information available from the Secretary's records and from other sources, including, but not limited to, the school, guaranty agencies, State authorities, and relevant accrediting associations. In other words, the Secretary has the discretion to review all necessary and relevant information to make a determination about a discharge based on false certification under these final regulations. We believe this approach strikes the right balance between thoughtful use of government resources and facilitating a full and fair process, by providing secretarial discretion and not requiring the Department to conduct unnecessary mandatory steps.

We do not believe that these final regulations will result in confusion to borrowers about their false certification discharge applications. Both the proposed and final regulations expressly state that the false certification discharge application will explain the qualifications and procedure for obtaining a discharge.

Information on eligibility for a false certification discharge will be provided to borrowers on the false certification discharge form and other forms, and we will provide updated information on our websites. Additionally, these final regulations provide in § 685.215(f)(5) that if the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination, and resumes collection.

We do not believe that it is necessary to provide a formal appeal process for a borrower to dispute a denial of a false certification discharge application. Due process does not require an appeal in this context. We provide additional avenues for a borrower to dispute a denial of a loan discharge through such means as contacting the FSA Ombudsman Group.[140] Currently, the Ombudsman Group works with borrowers and their loan holders to attempt to resolve disputes over matters such as discharge decisions. This process continues to be effective and the Ombudsman Group is engaged in a continuing process to improve their responsiveness to borrowers.[141] Given the considerable time and resources involved in formal appeal processes and the efficiency of the Ombudsman Group, we have decided not to include a formal process in the final regulations. With regard to (1) providing information to borrowers with regard to ''false certification'' discharge and (2) a formal appeal, we believe our regulatory approach strikes the right balance between thoughtful use of government resources and facilitating a full and fair process, by not adding additional, unnecessary mandatory steps.

Changes: None.

False Certification of a Borrower Without a High School Diploma or Equivalent

Comments: Several commenters supported the proposal to amend the eligibility criteria for false certification loan discharges to specify that, in cases when a borrower could not provide the school an official high school transcript or diploma but provided an attestation that the borrower was a high school graduate, the borrower would not qualify for a false certification discharge based on not having a high school diploma. These commenters agreed that a student attestation of high school graduation should be a bar to a false certification discharge. Many commenters expressed the view that if a student lies about earning a high school diploma for the purpose of applying for Federal student loans, the school should not be held responsible. One commenter noted that this proposal would provide a useful protection for schools serving populations for which providing a diploma can be difficult, such as non-traditional students who are unable to access their transcripts due to the length of time since high school graduation. Another commenter made the point that institutions and taxpayers should not be accountable for the fraudulent behavior of borrowers.

One commenter supportive of the proposal suggested additional language that, in the commenter's' view, would better reflect the intent of the regulatory change. The commenter recommended language specifying that a borrower does not qualify for a false certification discharge if the borrower falsely attested to the school in writing and under penalty of perjury that the borrower had a high school diploma or completed high school through home schooling.

One commenter, supportive of the proposal to deny a false certification loan discharge to students who deceived the school about the students' high school completion status, expressed concern that the parameters described in § 685.215(c)(1)(ii) are convoluted and may be difficult to manage at an open access institution such as most community colleges and vocational schools. Institutions often rely on the students' self-certification of high school completion, such as through the information submitted by the student in the FAFSA, which would fail the requirement described in proposed § 685.215(c)(1)(ii)(A). This commenter proposed revising § 685.215(c)(1)(ii) to provide that a borrower would not qualify for a false certification discharge under § 685.215(c)(1) if the borrower submitted a written attestation, including certification through the FAFSA, that the borrower had a high school diploma or its recognized equivalent.

One commenter agreed with the proposal, but noted that if the borrower reported not having a high school diploma or its equivalent upon admission to the school and the school certified the student's eligibility for Federal student aid, the school should be held liable for the funds that were provided to the student. As another commenter noted, although schools may rely on information in the FAFSA when certifying borrower eligibility, it is also the school's responsibility to resolve conflicting information. The commenter suggested including language that establishes an exception to this rule in cases where the school had information that indicates that the student's information is inaccurate.

Other commenters stated that, in some cases, a false attestation by a student is the result of a deliberate effort by a school. These commenters believed that students who have been induced to misrepresent their eligibility as a result of institutional efforts or practices should be entitled to relief under the regulations. Other commenters

[140] *See: https://studentaid.ed.gov/sa/repay-loans/disputes/prepare.*

[141] In the Report of the Federal Student Aid Ombudsman, the Ombudsman Group reported that customer satisfaction survey results were ''not as high as desired,'' but had improved from FY 2016. (*See: FSA Fiscal Year 2018 Annual Report, https://www2.ed.gov/about/reports/annual/2018report/fsa-report.pdf,* at pg. 100–101.) The Ombudsman noted, however, that they attributed the customer rating to individuals expressing dissatisfaction because they expected the Ombudsman to act as their advocate, desired an outcome that falls outside law and regulations, or based their satisfaction on the outcome achieved rather than the service provided.

expressed the view that the proposal may lead to schools rushing students through the attestation forms and, thus, may incentivize fraud on the part of schools. One commenter asserted that students will be counseled by schools to sign the attestation and stated that at least one accrediting agency forbids such attestations. The commenter recommended that a separate process be put in place for students who are unable to obtain their high school diplomas or transcripts due to natural disasters.

A group of commenters expressed the view that the attestation provision will enable predatory schools to defraud both students and taxpayers, while denying relief to borrowers. This group believed that the proposal conflicts with the broad statutory mandate to grant false certification discharges and raises serious due process concerns by creating a blanket restriction that denies false certification discharges whenever a school produces an attestation of high school status presumably signed by the borrower without consideration of facts or evidence. These commenters also noted that the FSA Handbook allows schools to accept alternative documentation of high school graduation status if a student cannot provide official documentation to verify high school completion status and, thus, an avenue already exists for the limited number of borrowers who cannot obtain their official high school transcripts to qualify for Federal student financial aid. These commenters asserted that the attestation exception is unnecessary and does not provide any benefit to borrowers.

Additionally, these commenters contended that the attestation exception would deprive borrowers of due process rights. According to these commenters, the proposed rule assumes the validity of a borrower's attestation and forecloses a borrower's ability to present evidence that he or she did not knowingly sign a false attestation. These commenters provided examples of signatures obtained through duress, misrepresentation, or deceitful and illegal business practices. In the view of these commenters, the regulations would provide a road map for abuse by predatory schools, that would only need to produce an attestation form—no matter how dubiously obtained—to insulate themselves from Departmental oversight and to bar any remedy for borrowers.

A group of commenters stated that it would be improperly retroactive for the Department to apply the attestation exception to all Perkins and Direct Loan borrowers, rather than to loans disbursed after the effective date of the regulations.

This group also opposed the Department's use of the disbursement date of the loan rather than the origination date to indicate when a borrower was falsely certified. These commenters argued that the use of disbursement date conflicts with the plain language of the HEA, which requires an institution to certify an individual's eligibility to borrow before it ''receives'' financial aid through a disbursement. These commenters stated that, while a school may admit a high school senior who is not yet eligible for student financial aid, it may not certify eligibility of that student until the student has obtained his or her high school diploma or GED. In the view of these commenters, allowing schools to certify for aid upon disbursement will incentivize schools to falsely certify high school seniors who subsequently do not graduate to continue receiving revenue. According to these commenters, the proposal would essentially allow a school to ''provisionally'' certify a borrower's eligibility and encourage fraud.

Discussion: We thank the commenters who supported our proposal. We also thank the commenter who pointed out that, while schools may rely on information provided on the FAFSA to certify eligibility for student financial aid, schools also have an obligation to resolve discrepant information. If the school has evidence that a borrower has falsely certified his or her high school graduation status, the school may not certify the borrower's eligibility for title IV funds, regardless of the information provided by the student in the FAFSA. While these regulations would prevent a borrower who falsely certified high school graduation status from receiving a false certification discharge, nothing in these final regulations relieves a school of its obligation to ensure that it certifies only eligible borrowers for Federal student aid under title IV.

The Department may always conduct a program review and make findings against a school that unlawfully certifies eligible borrowers for Federal student aid under title IV, and the Department may recover liabilities against such schools under 34 CFR part 668, subpart G. These final regulations, unlike the 2016 final regulations, place the burden on the borrowers and not the schools to certify eligibility for Federal student aid for purposes of a false certification discharge. Schools must rely upon the information that a borrower provides about a high school diploma or alternative eligibility requirements and cannot issue subpoenas to compel the production of records that will demonstrate the student has a high school diploma or its equivalent. Even if discrepant information exists, borrowers who submitted to the school a written attestation, under penalty of perjury, that they had a high school diploma, should not receive a false certification discharge if the borrower was untruthful in attesting that he or she had earned a high school diploma. Federal taxpayers should not pay for a borrower's misrepresentation of eligibility requirements for Federal student aid with respect to a high school diploma or its equivalent. In the event that a borrower was encouraged or coerced to sign an untrue attestation regarding his or her high school graduation status, the borrower would be entitled to relief under the borrower defense to repayment regulations, not the false certification loan discharge regulations.

The Department appreciates the suggestion to revise the regulatory language with respect to borrowers who completed high school through home schooling. We believe that proposed § 685.215(c)(1)(ii)(A) (§ 685.215(e)(1)(ii)(A) of these final regulations), which expressly includes borrowers who were home schooled adequately addresses students who received an education through homeschooling.

Although commenters provided some examples of schools that may have deliberately encouraged borrowers to falsely certify their high school graduation status, or rushed borrowers through the process of signing attestation forms, we are not aware of data that shows this is widespread. Additionally, the commenter misinterprets what the Accrediting Commission of Career Schools and Colleges (ACCSC) states in its ''Standards of Accreditation.'' Whereas the commenter stated that ACCSC ''forbids'' the use of attestations, in fact, the Standards state that ACCSC does not consider a self-certification to be documentation, not that the usage of such attestations is forbidden.[142] It would be detrimental to the school, and to the school's reputation, to systematically and intentionally enroll and award aid to ineligible students, who did not graduate from a high school or who do not meet the alternative eligibility criteria.

If a school knows that the borrower did not have a high school diploma or

[142] ACCSC, ''Standards of Accreditation,'' July 1, 2018, *http://www.accsc.org/UploadedDocuments/1967/ACCSC-Standards-of-Accreditation-and-Bylaws-07118.pdf.*

has not met the alternative eligibility requirements and represents to the borrower that the borrower should submit a written attestation, under penalty of perjury that the borrower had a high school diploma, then the school has committed a misrepresentation that constitutes grounds for a borrower defense to repayment claim. The Department will continue to hold schools accountable for misrepresentations made to a borrower under § 685.206, and the Department may initiate a proceeding against a school for a substantial misrepresentation by an institution under § 668.71. These enforcement mechanisms provide safeguards against fraudulent practices by schools.

The Department agrees with the commenter that 34 CFR 685.215(c)(1)(ii), as proposed in the 2018 NPRM, does not permit a student's certification of high school graduation status on the FAFSA to qualify as the written attestation, under penalty of perjury, that the borrower had a high school diploma. A form separate from the FAFSA will better signify the consequences and importance of such a written attestation, under penalty of perjury, to the borrower. The Department will provide a model language for such a written attestation that schools may choose to use.

The Department acknowledges that the FSA Handbook provides a list of documentation other than a high school diploma that may be used by a borrower to demonstrate eligibility for receiving Federal student aid under title IV. For example, a student who has a General Educational Development (GED) certificate is eligible to receive financial assistance under title IV.[143] A borrower who meets alternative eligibility requirements does not need to submit to the school a written attestation, under penalty of perjury, that the borrower had a high school diploma. The Department's final regulations recognize that there are alternative eligibility requirements and expressly reference these alternative eligibility requirements in 34 CFR 685.215(e)(1)(i).

We agree that the alternative eligibility requirements may benefit some borrowers, but some borrowers cannot satisfy these alternative eligibility requirements. If a borrower went to high school 40 years ago and lost his or her diploma, he or she may not be able to readily satisfy the alternative eligibility requirements. These final regulations afford such a borrower an avenue to nonetheless qualify to receive Federal student aid.

Similarly, these final regulations provide an avenue for students who lost their high school diplomas as the result of a natural disaster to qualify to receive Federal financial aid. The Department acknowledges that such students also may qualify for Federal financial aid through the alternative eligibility requirements.[144] Accordingly, the Department does not need to create a separate process for survivors of natural disasters.

These final regulations provide borrowers with due process. Procedural due process requires notice and an opportunity to be heard. These regulations give borrowers notice that if they falsely or fraudulently submit to the school a written attestation, under penalty of perjury, that they had a high school diploma, then they will not qualify for a false certification discharge. The Federal false certification discharge application provides the borrower with an opportunity to be heard. Accordingly, these final regulations satisfy due process. However, in the event that the borrower was coerced into signing such an attestation as a result of a school's misrepresentation, the borrower would likely qualify for relief under the borrower defense to repayment regulations.

These final regulations provide that a borrower does not qualify for a false certification discharge under § 685.215(e)(1) if the borrower was unable to provide the school with an official transcript or an official copy of the borrower's high school diploma and submitted to the school a written attestation, under penalty of perjury, that the borrower had a high school diploma. If the school forges the borrower's signature on such an attestation, then the borrower did not submit this written attestation to the school and would qualify for a false certification discharge.

Additionally, if the school signs the borrower's name on the loan application or promissory note without the borrower's authorization, then the borrower may still qualify for a false certification discharge under § 685.215(a)(1)(iii). These final regulations continue to include forged signatures on a loan application or promissory note as an adequate basis for a false certification student loan discharge.

The Department in its 2018 NPRM proposed rescinding the provision in the 2016 final regulations that if the Secretary determines that the borrower does not qualify for a false certification discharge, the Secretary will notify the borrower in writing of its determination on the request for a false certification discharge and the reasons for the determination.[145] In response to comments that raised due process concerns, the Department will no longer rescind this provision for the discharge procedures that apply to loans first disbursed on or after July 1, 2020, and includes this provision in the final regulations as § 685.215(f)(5). If the Secretary determines that a borrower does not qualify for a discharge, then under § 685.215(f)(5), the Secretary notifies the borrower in writing of that determination and the reasons for that determination, and resumes collection. The Department has always resumed collection of the loan after the Department denied a false certification discharge and is adding the phrase ''and resumes collection'' in § 685.215(f)(5) as a technical amendment to provide clarity.

We understand the commenter's concern about retroactive application of the regulatory changes. The regulations regarding false certification will apply to loans first disbursed on or after July 1, 2020, and will not apply retroactively. We have revised these final false certification regulations only to apply to new borrowers in the Direct Loan program. False certification discharges are not available in the Perkins Loan program; therefore, these regulations will not affect those borrowers. We also are not making changes to the false certification discharge requirements for the FFEL program.

The Department disagrees that using the disbursement date of the loan rather than the origination date for purposes of false certification discharge contradicts the HEA. As noted in the 2018 NPRM, the Department acknowledged the concerns of the negotiator who noted that a borrower may be a senior in high school with the intention of graduating when that borrower applies for assistance under title IV. The Department recognizes that under section 484(a)(1) of the HEA and 34 CFR 668.32(b), a student is not eligible to receive assistance under title IV if the student is enrolled in an elementary or secondary school. Section 437(c) of the HEA provides the authority for a false certification discharge, and such a discharge applies only to a ''borrower

[143] Federal Student Aid Handbook, AVG–90 (2017–18).

[144] Federal Student Aid Handbook, ''School-Determined Requirements,'' May 2018, Pg. 1–10, *https://ifap.ed.gov/fsahandbook/attachments/1819FSAHbkVol1Ch1.pdf.*

[145] 83 FR 37251.

who received . . . a loan made, insured, or guaranteed under this part.'' A borrower will not be eligible for the discharge unless the borrower received the loan. Moreover, a school may realize that a borrower provided the school with false or discrepant information for eligibility of title IV assistance after the origination date of the loan but before the loan is disbursed, and the school may revoke its certification of eligibility for that borrower prior to disbursement of the loan. Accordingly, the date of disbursement of the loan aligns with the HEA and serves as a better gauge to determine eligibility for a false certification discharge. As noted above, the Department has various enforcement mechanisms to address fraud by a school, and a school is not permitted to falsely certify a borrower's eligibility to receive assistance under title IV.

Changes: We have revised our proposed changes to § 685.215 to clarify that they apply only to loans disbursed on or after July 1, 2020. Additionally, in the discharge procedures for loans first disbursed on or after July 1, 2020, the Department is not rescinding the provisions in the 2016 final regulations that provide that the Secretary will notify the borrower in writing of its determination on the request for a false certification discharge and the reasons for the determination, if the Secretary determines that the borrower does not qualify for a false certification discharge.[146] The Department includes this provision in these final regulations as § 685.215(f)(5). If the Secretary determines that a borrower does not qualify for a discharge, then under § 685.215(f)(5), the Secretary notifies the borrower in writing of that determination and the reasons for that determination, and resumes collection. The Department has always resumed collection of the loan after the Department denied a false certification discharge and is adding the phrase ''and resumes collection'' in § 685.215(f)(5) as a technical amendment.

Additional False Certification Discharge Recommendations

Comments: Two commenters recommended that the Department retain language on automatic false certification discharges for Satisfactory Academic Progress (SAP) violations in the 2016 final regulations. One of these commenters noted that program reviews would not address the purpose of the SAP language in the 2016 final regulations, which was to permit loan discharges for the affected borrowers when the Department finds evidence of falsification of SAP. The commenter stated that while investigations, audits, and reviews of institutional policies and practices are necessary to uncover evidence of such falsification, and to ensure that the institution is held accountable, the borrower should not be held responsible for repaying the loan.

Discussion: We do not believe that it is appropriate to have a specific provision in the regulations providing for a false certification discharge based on falsification of SAP. Existing § 685.215(c)(8) (2016) already provides that the Department may discharge a borrower's Direct Loan by reason of false certification without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge, and § 685.215(e)(7), will also include such a provision. This regulation gives the Secretary broad discretion in discharging a loan without an application from the borrower based on information in the Secretary's possession. Accordingly, this regulation does not preclude the Secretary from considering evidence in her possession that the school falsified the SAP progress of its students as part of the Secretary's decision to discharge a loan.

However, we do not think it is appropriate for the regulation to specifically include Satisfactory Academic Process as information the Secretary would consider, and we do not include that language for loans first disbursed on or after July 1, 2020. Evaluation of an institution's implementation of their SAP policy is part of an FSA program review, and thus, the Department has a mechanism in place to identify inappropriate activities in implementing an institution's SAP policy. SAP determinations are subject to the internal policies of the school, and it would be difficult to determine if a school violated its own SAP policies in the context of, and in conjunction with, reviewing a false certification discharge application. The Department does not wish to single out and elevate evidence that the school has falsified the SAP of its students above other information in the Secretary's possession that she may use to discharge all or part of a loan without a Federal false certification application from the borrower.

Additionally, we do not have evidence that falsification of SAP is widespread. As we stated in the 2016 final regulations, schools have a great deal of flexibility both in determining and in implementing SAP standards. There are a number of exceptions under which a borrower who fails to meet SAP can continue to receive title IV aid. Borrowers who are in danger of losing title IV eligibility due to a failure to meet SAP standards often request reconsideration of the SAP determination. Schools typically work with borrowers in good faith to attempt to resolve the situation without cutting off the borrower's access to title IV assistance.

We do not believe that a school should be penalized for legitimate attempts to help a student who is not meeting SAP standards, nor do we believe a student who has successfully appealed a SAP determination should be able to use that initial SAP determination to obtain a false certification discharge on his or her student loans. However, a student may use a misrepresentation about SAP to successfully allege a borrower defense to repayment under 34 CFR 685.206(e), assuming the student satisfies the other elements of a borrower defense to repayment claim. For these reasons, it is not necessary to expressly state that the information the Secretary may consider includes evidence that the school has falsified the SAP of its students.

Changes: None.

Comments: None.

Discussion: A disqualifying condition or condition that precludes a borrower from meeting State requirements for employment was a basis for a false certification discharge prior to the 2016 final regulations and remains a basis for a false certification discharge. In the 2016 final regulations, the Department added language in 34 CFR 685.215(c)(2) to require a borrower to state in the application for a false certification discharge that the borrower did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary. The Department in its 2018 NPRM noted that ''the changes in the 2016 final regulations did not alter the operation of the existing regulation as to disqualifying conditions in any meaningful way, and as a result does not propose such added language in these regulations.''[147] The Department would like to further note that its past guidance previously discouraged schools from requesting or relying upon a borrower's criminal record.[148] Some

[146] 83 FR 37251.

[147] 83 FR 37270.

[148] U.S. Dep't of Educ., Beyond the Box: Increasing Access to Education for Justice-Involved

Continued

State and Federal laws also may discourage or prevent schools from requesting information about a student's physical or mental health condition, age, or criminal record.[149] If schools do not have knowledge of the disqualifying condition that precludes the student from meeting State requirements for employment in the occupation for which the training program supported by the loan was intended, then schools cannot falsely certify a student's eligibility for Federal student aid under title IV. Accordingly, a borrower's statement that the borrower has a disqualifying condition, standing alone, will not qualify a borrower for a false certification discharge under 34 CFR 685.215(a)(1)(iv).

Changes: None.

Financial Responsibility, Subpart L of the General Provisions Regulations

Section 668.171, Triggering Events

Comments: Numerous commenters wrote that the Department should strengthen the mandatory triggers. They urged the Department to strengthen the financial responsibility portion of the proposed rules by reinstating the full list of triggers provided in the 2016 final rules or by adding additional triggers. Commenters reasoned that, in order to protect taxpayer dollars, the Department should strengthen school accountability by increasing the number of early warnings of an institution's coming financial difficulties. A commenter stated that the Department needs ''to develop more effective ways to identify events or conditions that signal *impending* financial problems.'' [150] Without that, the commenters concluded the Department would not truly be able to anticipate potential taxpayer liabilities and obtain financial protection prior to incurring those liabilities.

The commenters believed that the mandatory and discretionary triggering events in § 668.171(c) and (d) were inadequate, too narrow and less predictive, or late in detecting misconduct by institutions compared to the triggering events in the 2016 final regulations. The commenters argued that by eliminating or weakening several of the 2016 triggering events, or making those triggering events discretionary, the Department has made it easier for an institution to continue to operate, or operate without consequences or accountability, in cases when the institution would likely close or incur significant liabilities.

As a result, the commenters reasoned that the Department would be less likely to obtain financial protection, or obtain it on a timely basis, leaving taxpayers to bear the costs. In addition, some of these commenters noted that the Department's Office of the Inspector General issued a report [151] stating, in part, that (1) the Department would receive important, timely information from institutions experiencing the triggering events in the 2016 final regulations that would improve the Department's processes for identifying institutions at risk of unexpected or abrupt closure, and (2) enforcement of the regulations would also improve the Department's processes for mitigating potential harm to students and taxpayers by obtaining financial protection based on broader and more current information than institutions provide in their financial statements.

Many commenters supported the mandatory and discretionary triggering events proposed in the 2018 NPRM, noting that they focus on known, quantifiable, or material actions. As such, some of these commenters believed the triggering events are an improvement over those in the 2016 final regulations that could have exacerbated the financial condition of an institution with minor and temporary financial issues or required an evaluation of the impact that undefined regulatory standards (*i.e.,* high drop-out rates, significant fluctuations in title IV funding) would have on an institution's financial condition.

Other commenters were concerned that the proposed triggering events exceed the Department's authority, arguing that the triggers include factors that are not grounded in accounting principles and do not account for an institution's total financial circumstances as required under section 498(c) of the HEA. Along the same lines, a few commenters were concerned that some of the triggering events were overly broad and poorly calibrated to identify situations when an institution is unable to meet its obligations and asked the Department to consider whether the triggers are necessary.

Some commenters believed that the Department should apply the mandatory and discretionary triggers equally across all institutions. In addition, the commenters noted that proprietary institutions must already comply with the provisions that a school must receive at least 10 percent of its revenue from sources other than title IV, HEA program funds (also known as the ''90/10'' requirement). In addition, all institutions must meet the requirements for a passing composite score and cohort default rates and argued that the Department should not create new requirements for these provisions exclusively for proprietary institutions.

Discussion: The Department disagrees with the comments that the proposed triggering events will diminish our oversight responsibilities. These regulations do not change the approach the Department currently uses to identify and react contemporaneously to actions or events that have a material adverse effect on the financial condition or viability of an institution.

The 2016 final regulations include as triggers (1) events whose consequences are uncertain (*e.g.,* estimating the likely outcome and dollar value of a pending lawsuit or pending defense to repayment claims, or evaluating the effects of fluctuations in title IV funding levels), (2) events more suited to accreditor action or increased oversight by the Department (*e.g.,* unspecified State violations that may have no bearing on an institution's financial condition or ability to operate in the State), and (3) results of a yet-undefined test (*e.g.,* a financial stress test) that would be akin to the current financial responsibility standards and potentially inconsistent with the current composite score methodology. The Department acknowledges that the composite score methodology should be updated through future rulemaking. In these final regulations, we adopt mandatory triggering events whose consequences are known, material, and quantifiable (*e.g.,* the actual liabilities incurred from lawsuits) and objectively assessed through the composite score methodology or whose consequences pose a severe and imminent risk (*e.g.,* SEC or stock exchange actions) to the Federal interest that warrants financial protection.

Additionally, based upon our review of the comments, the Department has decided to revise the proposed triggers in these final regulations. First, the Department has decided not to rescind the high annual drop-out rates trigger in the 2016 final regulations. Despite our previous concerns about whether a threshold has ever been established for this trigger and whether it is an event more suited to action by an accreditor, we have reconsidered this position, in part based on a comment pointing out that Congress has identified drop-out rates as an area of such significant

Individuals (May 9, 2016), *available at https://www2.ed.gov/documents/beyond-the-box/guidance.pdf.*

[149] *See e.g.,* Wash. Rev. Code section 28B.160.020 (2018).

[150] 81 FR 39361. (emphasis in comment).

[151] ED–OIG/I13K0002, available at *https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf.*

concern that a high rate should be factored into the Department's selection of institutions for program reviews.

However, we do not adopt this commenter's logic regarding significant fluctuations in Pell Grants or loan volume. While statutorily appropriate for a program review, we believe that additional financial oversight, in the form of a discretionary trigger, would be ill-suited to fluctuations in loan volume and Pell grant amounts. First, significant fluctuations in loan volume year-over-year more readily stem from events that do not indicate financial instability, such as through institutional mergers, which the Department has reason to believe will continue if not increase in the future.[152] Next, the Department is concerned that linking Pell Grant fluctuations to a discretionary trigger would harm low-income students and discourage institutions from serving students who rely on Pell Grants. Finally, fluctuations in Pell Grants and loan volume may be inversely related to national economic conditions—such as a recession leading to newly unemployed workers seeking additional training or education—rather than the financial health of an institution.

Second, the Department closely considered comments regarding whether our proposed triggers were strong enough to identify early warning signs of financial difficulty and whether the Department could properly and quickly identify events or conditions that signaled impending financial problems. As more fully explained below, the Department continues to believe that our proposed triggers provide necessary protections and are sensitive to early warning signs. However, the Department takes its responsibility as stewards of taxpayer funds seriously and, as a result, is responsive to community concerns regarding whether our oversight of those funds is insufficient.

Based upon numerous comments that we should strengthen the financial responsibility regime, as well as our general duty to taxpayers, the Department has decided that when two or more unresolved discretionary triggers occur at an institution within the same fiscal year, those unresolved discretionary triggers will convert into a mandatory triggering event, meaning that they will result in a determination that the institution is not able to meet its financial or administrative obligations.

Institutions will already have notice of, and be subject to, the discretionary triggering events in § 668.171(d). The Department has determined that two or more unresolved discretionary triggers may be indicators of near-term financial danger that leads to the conclusion that an institution is unable to meet its financial or administrative obligations. This regulatory change strengthens authority the Secretary already possesses, at § 668.171(d), by empowering the Department to act when an institution exhibits a pattern of problematic behavior.

We believe the elevation of multiple discretionary triggers, that are unresolved and occur in the same fiscal year, to mandatory triggers strengthens the Department's ability to enforce its financial responsibility requirements. Institutions that exhibit behavior that is likely to have a material adverse effect on the financial condition of the institution require the Department to respond to protect taxpayer and student interests.

Despite these changes, our review of the comments does not lead us to the conclusion that the Department should adopt the 2016 triggers in their entirety. Through these triggers, the Department balances its interest in taxpayer protection with institutional stability. In particular, the Department seeks to avoid a repeat of prior instances in which the Department sought a letter of credit from an institution that it triggered a precipitous closure, harmed a large number of students who were unable to complete their program of study, and required taxpayers to pay an even greater cost in the form of closed school discharges. We also seek to avoid the use of triggers, such as pending, unsubstantiated claims for borrower relief discharge and non-final judgements, that do not provide an opportunity for due process, invite abuse, and have already resulted in high numbers of unsubstantiated claims. The triggers have also proven unduly burdensome for institutions that were required to report all litigation, even allegations unrelated to claims for borrower defense relief. We view the triggers in these final regulations as providing a sound and more objective basis than the 2016 triggers for determining whether an institution is financially responsible.

Contrary to the presumption by the commenters that the 2016 triggers would have identified more financially troubled institutions, we note that (1) the potential liabilities arising from pending lawsuits or borrower defense claims is far from certain both in timing and in amount, and estimating those liabilities for the purpose of recalculating the composite score is problematic and could inappropriately affect institutions for several years (see the discussion under heading ''Mandatory and Discretionary Triggering Events.''), and (2) reclassifying some the triggers as discretionary will still provide review to identify actions or events that may have a material adverse impact on institutions. In addition, while we agree with the OIG report that information provided by the triggering events will better enable the Department to exercise its oversight responsibilities, we disagree with the notion raised by the commenters that the triggering events outlined in the 2018 NPRM will dilute the Department's ability to do so. To the contrary, we believe the approach adopted in these final regulations, together with the revisions explained above, will identify those institutions whose post-trigger financial condition actually warrants financial protection, rather than applying triggers that presumptively result in institutions having to provide financial protection and unduly precipitate coordinated legal action against an institution that trigger financial protections that could have devastating—and in many cases unwarranted—financial and reputational impacts on the institution.

With regard to the comments that the triggers exceed the Department's authority, we note that section 498(c) of the HEA directs the Secretary to determine whether the institution ''is able . . . to meet all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.''[153] The statute uses the present tense to direct the Secretary to assess the ability of the institution to meet current obligations. These regulations satisfy that directive by requiring that the assessment is performed contemporaneously with the occurrence of a triggering event. The use of these triggers for interim evaluations, in addition to the composite score calculated from the annual audited financial statements, using the financial responsibility ratios, takes into

[152] Kellie Woodhouse, ''Closures to Triple,'' *Inside Higher Ed,* September 28, 2015, *https://www.insidehighered.com/news/2015/09/28/moodys-predicts-college-closures-triple-2017;* Clayton M. Christensen and Michael B. Horn, ''Innovation Imperative: Change Everything,'' *The New York Times,* November 1, 2013, *https://www.nytimes.com/2013/11/03/education/edlife/online-education-as-an-agent-of-transformation.html;* Abigail Hess, ''Harvard Business School Professor: Half of American Colleges Will Be Bankrupt in 10 to 15 Years,'' *CNBC,* August 30, 2018, *https://www.cnbc.com/2018/08/30/hbs-prof-says-half-of-us-colleges-will-be-bankrupt-in-10-to-15-years.html.*

[153] 20 U.S.C. 1099c(c)(1).

consideration the total financial circumstances of the institution on an ongoing basis.

We disagree with the comment that some of the triggering events are overly broad and poorly calibrated. As discussed in this section and under the heading ''Mandatory and Discretionary Triggering Events,'' the Department recalibrated the triggers from the 2016 final regulation to more narrowly focus on actions or events that have or may have a direct adverse impact and eliminated the triggers from that final regulation that were speculative or not associated directly with making a financial responsibility determination.

In response to the comments that the triggering events should apply equally to all institutions, the commenters appear to suggest that the Department somehow change or extend existing statutory requirements (*e.g.,* impose the 90/10 trigger on all institutions) or not consider other agency provisions that apply only to certain institutions (*e.g.,* SEC and exchange requirements for publicly traded institutions).

The Department lacks the authority to apply certain statutory requirements to other institutions and cannot ignore for the sake of uniformity the risks associated with, or the consequences of, an institution that fails to comply with such requirements. With regard to the objections for establishing triggers for provisions that already have associated sanctions (90/10 and CDR), it is the consequence of those sanctions that we are attempting to mitigate by obtaining financial protection. An institution that fails 90/10 for one year, or has a cohort default rate of 30 percent or more for two consecutive years, is one year away from possibly losing all or most of its title IV eligibility as well as its ability to continue to operate is a going concern. In that event, the financial protection obtained as a result of these triggering events would cover some of the debts and liabilities that would otherwise be shouldered by taxpayers. However, the Department agrees that in instances in which the HEA does not designate a specific trigger for a specific type or class of institution, the Department will not use its regulatory power to create new requirements or sanctions that apply to some but not all institutions.

Changes: The Department revises § 668.171 to include a new paragraph at § 668.171(d)(5) to read: ''As calculated by the Secretary, the institution has high annual dropout rates; or''. Proposed § 668.171(d)(5) is now redesignated § 668.171(d)(6). Additionally, the Department adds paragraph § 668.171(c)(3) to state that, for the period described in § 668.171(c)(1), when the institution is subject to two or more discretionary triggering events, as defined in § 68.171(d), those events become mandatory triggering events, unless a triggering event is resolved before any subsequent event(s) occurs.

Comments: Some commenters were concerned that the proposed framework of mandatory and discretionary triggering events does not clearly specify how the Department will manage multiple triggering events or specify whether a recalculated composite score is used only for determining that an event has a material adverse effect on an institution or whether the recalculated score represents a new, official composite score. Similarly, other commenters requested that the Department explain how it will apply, handle, determine, or view specific instances surrounding a triggering event and, for discretionary triggering events, how the Department will determine whether an event has a material adverse effect on an institution.

Other commenters noted that the NPRM appears to obligate the Department to recalculate the composite score every time a triggering event is reported. The commenters suggested that the Department reserve the right to forgo a recalculation if the reported liability is deemed immaterial.

The commenters argued that an institution should not be required to report every liability arising from a judicial or administrative action, without regard to the amount or resulting implications, and the Department would not need to perform a recalculation for every reported liability. To address these issues, the commenters suggested that the Secretary establish a minimum percentage or dollar value above which an institution would be required to notify the Department and the Department would recalculate the composite score. For example, a judicial or administrative action resulting in a liability under $10,000 would not require reporting or recalculating the composite score and would reduce burden on institutions and the Department.

Discussion: Based on the actual liability or loss incurred by an institution from a triggering event, the Department recalculates the institution's composite score to determine whether any additional action is needed. As was the case in the 2016 final regulations, if the institution's recalculated score is 1.0 or higher, no additional action is needed, and there is no change in the institution's official composite score.

For example, assume that an institution's official composite is 1.8, but as a result of a triggering event, its recalculated score is 1.4. The institution's official composite score remains at 1.8, even though a score of 1.4 would in the normal course require the institution to participate in the title IV, HEA programs under the zone alternative in 34 CFR 668.175(c). Under the trigger provisions, an institution with a recalculated score in the zone would not be required to provide a letter of credit, nor would it be subject to any of the zone provisions.

On the other hand, if the institution's recalculated composite score was a failing score of less than 1.0 (*e.g.,* a score of 0.7), that score becomes the institution's official composite score and remains the composite score unless modified by a subsequent triggering event or until the Department calculates a new official composite score based on the institution's annual audited financial statements for that fiscal year. In this case, with a failing score of 0.7, the institution would be required to participate in, and be subject to the provisions of, the letter of credit or provisional certification alternatives under 34 CFR 668.175(c) or (f).

The Department has determined that there is a greater risk to taxpayers when an institution has a failing composite score. As was the case with the 2016 final regulations, the Department will only take action based on interim adjustments that result in a failing composite score. The official composite score is based on an institution's annual audited financial statements. The interim adjustments are made based on triggering events that occurred after the end of the institution's fiscal year. These adjustments will show up in a subsequent year and be reflected in the audited financial statements for that year. The official composite score needs to be based only on the institution's audited information. The adjustments that are made to a composite score subsequent to the most recently accepted audited financial statements are designed to protect the Department, students, and taxpayers.

Given that a recalculated score does not affect an institution's official composite score, unless it is a failing score less than 1.0, we believe it is unnecessary to establish a materiality threshold below which a triggering event is not reported, as suggested by the commenters. A settlement, final judgment, or federal or state final determination resulting in a liability of $10,000 may be material for an institution whose financial condition is already precarious, but a $10 million liability may not have a material impact on a financially healthy institution.

To objectively assess whether a liability is material to a specific institution, we rely on the composite score methodology. Regardless of whether an institution is on the cusp of failing the composite score or has a high composite score, the relevant issue is whether the liability that must be reported results in a failing recalculated score.

We believe that liabilities arising from minor settlements, final judgments, and final determinations by a Federal or State agency are not likely to create variability in composite scores that could have negative implications, particularly with oversight entities that use or rely on the composite score, because composite scores will only be changed if the recalculated scores are failing. In the cases where the recalculated scores are failing, we believe that the cognizant oversight entities should be interested in those outcomes.

On its own, it is important for the Department to know that an institution has incurred liabilities arising from settlements, final judgments, and final determinations by Federal or State agencies. Although the amount of each liability arising from such instances may be a minor amount, the cumulative effect of numerous settlements, final judgments, and final Federal or State agency determinations could damage the institution's financial stability. The threshold that the Department has established is any amount that causes the institution to have a failing composite score, and the only way the Department can determine if an institution has reached this threshold, is by requiring the institution to report the liabilities referenced in paragraph (c)(1)(i)(A).

Regarding the comments about the burden associated with reporting all incurred liabilities, we considered this burden in establishing the reporting process in these final regulations and believe it adequately balances the burden on schools with the Department's ability to obtain necessary information. In addition, we discuss more details of the reporting requirements under the heading ''Reporting Requirements, § 668.161(f)'' below.

With respect to how the Department will manage and evaluate a triggering event or handle multiple events, we believe it is not appropriate or feasible to detail the Department's internal review process in these final regulations. The outcome for any failing composite score recalculation will be available to the reporting institution. To the extent that the Department establishes procedures for institutions to report and respond to the triggering events or develops guidelines regarding how we intend to evaluate certain triggering events, the Department will make that information available to institutions.

Generally, the mandatory triggers reflect actions or events whose consequences are realized immediately, such as a liability incurred through a final judgment after a judicial action or through a final administrative action by a Federal or State agency, a withdrawal of owner's equity that reduces resources available to the institution to meet current needs, or an SEC or exchange violation that diminishes the institution's ability to raise capital or signals financial distress. For a mandatory trigger whose consequences can be quantified (a monetary liability incurred by the institution or withdrawal of owner's equity), a failing recalculated score (less than 1.0) evidences an adverse material effect. For the other mandatory triggers (SEC and exchange violations), given the nature and gravity of those events, we presume they will have an adverse material effect on the institution's financial condition. In either case, the burden falls on the institution to demonstrate otherwise at the time it notifies the Department that the event has occurred.

On the other hand, discretionary triggers generally reflect actions or events whose consequences are less immediate and less certain. For a discretionary trigger, the Department will need to show that the event is likely to have a material adverse effect on the institution's financial condition or jeopardize the institution's ability to continue to operate as a going concern.[154] The Department will consider in its review any additional information provided by the institution at the time it reports that event.

Changes: None.

Comments: One commenter criticized the Department's rulemaking with respect to financial responsibility, claiming that the Department has not analyzed data on the existing financial protection held by the Department to assess the degree to which it may fall short of institutional liabilities, or provided the public with information necessary to establish the extent to which the Department's current policies and practices meet the statutory requirement that the Department ensure institutions of higher education are financially responsible. The commenter submitted a FOIA request related to this topic and stated that the request is now the subject of ongoing litigation.

In addition, the commenter contended that the Department failed to provide information during the rulemaking process regarding how it sets the amount of a required LOC. While acknowledging the Department's longstanding regulations that establish a floor for the amount of the LOC at 10 percent of the amount of an institution's prior year title IV funding, the commenter admonished the Department for failing to (1) consider whether to increase the amount of LOC floor in the proposed regulations in light of revoking the automatic triggers and (2) provide any information on the methodology the Department uses to set the amount of an LOC.

As a result, the commenter said the Department had not provided the necessary information to say whether it is adequately protecting taxpayers from significant liabilities. The commenter also asserted that the Department cannot engage in a reasoned negotiated rulemaking and cannot provide a fulsome opportunity to comment as required by both the HEA and the APA, without first analyzing the information the commenter had requested.

Other commenters contended that the Department is not adequately identifying risks from institutions noting that the majority of the letters of credit (LOC) obtained by the Department came from institutions with failing composite scores, but only a few LOCs stemmed from significant concerns or events like those envisioned by the 2016 triggers.

Discussion: First, we note that the sufficiency of the Department's response to any individual FOIA request is beyond the scope of this rulemaking and decline to comment on conclusions drawn about the response or the ongoing litigation.

With respect to the other aspects of the comment, the commenter appears to be confusing LOCs obtained for different purposes. The financial protection triggers in these and the 2016 final regulations were designed to help

[154] *Note:* In the 2016 final regulations, we established that for the discretionary triggers, an institution does not meet its financial or administrative obligations if the Secretary demonstrates that the trigger was ''reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution,'' and included a non-exhaustive list of discretionary triggers. 34 CFR 668.171(g) (2017). In contrast, in the 2018 proposed regulations, we characterized the Secretary's burden as determining if any of the listed events ''is likely to have a material adverse effect on the financial condition of the institution . . .'' This phrasing is a technical change for clarity and as a result, we are retaining this phrasing in the final regulations. However, we include a finite list of discretionary trigger events, to provide more certainty to institutions and to facilitate the Department's ability to administer the regulations.

identify conditions or events that were likely to have a forward-looking impact on an institution's financial stability. The 2016 final regulations were not in effect at the time of the 2018 NPRM and the negotiated rulemaking that preceded it, so no triggers were in place at the time. Prior to the 2016 final regulations becoming effective, the Department's regulations primarily authorized requiring a LOC from an institution for failing to satisfy the standards of financial responsibility based on its annual audited financial statements, or during a change of institutional control, or more recently in the event that an institution files for receivership.

We do not believe that an analysis of LOCs obtained under the preexisting regulations based solely on information contained in audited financial statements would have facilitated fulsome comment and participation about how best to calibrate forward-looking financial responsibility triggers because the actions or events relating to the triggers may not be evident, or otherwise disclosed, in those statements. The Department must walk a fine line between protecting taxpayers against sizeable unreimbursed losses through borrower defense loan and closed school loan discharges, and forcing the closure by establishing LOC requirements that themselves push the institution in unreasonable financial duress.

In addition, we did not propose in the 2018 NPRM to remove the concept of automatic triggers altogether. We proposed modifying or removing some of the triggers, referred to in the 2018 NPRM and in these final regulations as ''mandatory'' instead of ''automatic,'' but the concept that certain events trigger a requirement for financial protection, absent a compelling response from an institution that the triggering event does not and will not have a material adverse effect on its financial condition, was not removed from the proposed or these final regulations. In the 2018 NPRM and these final regulations, we set forth a reasoned basis for the way we propose to structure the automatic/mandatory and discretionary triggers, including why and how that structure differs from the 2016 final regulations. This basis includes our analysis of the rationales specified in the 2016 final regulations and the reasons for why our weighing of facts and circumstances results in a different approach.[155]

The analysis of the triggers we incorporate into these final regulations is detailed elsewhere in this section. In summary, both at negotiated rulemaking and through the 2018 NPRM comment process, the public had sufficient information for a fulsome opportunity to comment and participate in the discussion about financial protection triggers.

With regard to how the Department establishes the amount of a LOC, as the commenter noted, the amount is, and has historically been, set initially at 10 percent of the total amount of the prior year's title IV funds received by an institution. We have always had the discretion to require a LOC greater than 10 percent, but established in the 2016 final regulations under § 668.175(f)(4), that the amount of a LOC may be any amount over 10 percent that the Department demonstrates is sufficient to cover estimated losses. However, in the 2018 NPRM we did not propose, and do not adopt in these final regulations, the approach in the 2016 final regulations that specifically tied any increase in the LOC over 10 percent to the amount needed to cover estimated losses. While that approach may be appropriate in some cases, we believe the Secretary should have, and historically has had, the flexibility to establish the amount of the LOC on a case by case basis, as may be warranted by the specific facts of each case.

With respect to the comment about increasing the LOC floor, if the commenter is suggesting that by providing larger LOCs, institutions that are not subject to the removed triggers would mitigate the risk to taxpayers from institutions that were previously subject to those triggers, that arrangement implies the existence of a shared risk pool from which the Department could tap to cover liabilities from any institution. A LOC is specific to an institution and cannot be used to cover the liabilities of any other institution. Consequently, increasing the LOC floor would not have the effect the commenter intended, but perversely result in inappropriately increasing the LOCs of unaffected institutions.

Changes: None.

Mandatory and Discretionary Triggering Events

Section 668.171(c)(1), Actual Liabilities From Defense to Repayment Discharges and Final Judgments or Determinations

Comments: Some commenters believed that the 2016 final regulations unfairly penalized an institution based upon unfounded or frivolous accusations in pending lawsuits that, once settled or adjudicated, could result in no material financial impact on the institution. These and other commenters agreed with the proposal in the 2018 NPRM to hold an institution accountable for the actual amount of liabilities from settlements, final judgments, or final Federal or State agency determinations.

Similarly, other commenters believed that the proposal to use the actual liabilities incurred by an institution in recalculating its composite score corrected a significant flaw in the 2016 final regulations that could have triggered a reassessment of an institution's financial responsibility based on alleged or contingent claims that may never come to pass.

Other commenters believed that the current triggers for pending lawsuits and defense to repayment claims under § 668.171(c)(1)(i) and (ii) and (g)(7) and (8) should be retained to better protect students and taxpayers.

Discussion: We have determined that the 2016 final regulations enumerated certain triggering events that may not serve as accurate indicators of an institution's financial condition. To reduce the burden on institutions in reporting the triggering events and mitigate the possibility that institutions would improperly be required to provide financial protection as a consequence of those events, while balancing the need to protect the Federal interests, it is our objective in these regulations to establish triggers that are more targeted and more consistently identify financially troubled institutions.

For example, under existing § 668.171(c)(1)(i)(B) and (c)(1)(ii) (2017), an institution is not financially responsible if the liabilities from pending lawsuits brought by State or Federal authorities, or generally by other parties, result in a recalculated composite score of less than 1.0, as provided under § 668.171(c)(2) (2017). To perform this calculation, we value the potential liability from a pending suit as the amount demanded by the suing party or the amount of all of the institution's tuition and fee revenue for the period at issue in the litigation. However, we recognize as a commonsense matter that some lawsuits may demand unrealistic amounts of money at the outset of the proceedings, yet may ultimately be resolved for significantly lower amounts or no liability. Because the amount of the potential liability from pending suits or borrower defense-related claims, however it is determined, is treated as if it were paid in recalculating an institution's composite score, the institution could be required unnecessarily to provide a letter of credit or other financial protection not

[155] See *e.g.,* 83 FR 37272.

only in the year the suit is brought, or that claims are made, but also for any subsequent years in which the suit or claims remain pending. This result places a significant burden on the institution for lawsuits that ultimately may not have a material adverse effect on its financial condition and viability.

Further, in the brief time since implementing the 2016 final regulations, the Department has encountered a significant administrative burden and difficulty in monitoring institutions' reports of pending litigation, determining whether such litigation meets the requirements of the 2016 final regulations, and valuing such suits, many of which have not led to a failure of financial responsibility due to a recalculated composite score of less than 1.0.

We reaffirm our position in the preamble to the 2016 final regulations that the Department has the authority to review lawsuits pending against an institution. However, in view of the burden on institutions and the difficulty of accurately valuing the potential liability of pending suits, in these regulations, we have instead determined that the mere existence of a lawsuit against an institution should not qualify as a triggering event and decline to include pending suits, whether brought by a Federal or State entity, or by another party, as automatic or mandatory triggers, as was the case in the 2016 final regulations.

Likewise, valuing the amount of pending borrower defense claims under existing § 668.171(g)(7) and (8) (2017), depends in part on factors such as whether the claims stem from similarly situated borrowers (*e.g.,* claims arising for the same reasons), the timing of the valuation (*e.g.,* the valuation may occur after a few claims are filed or the Department may look at a pool of claims filed during a specified time period), and whether the Department re-values the remaining pending claims in a pool after it has adjudicated some of the claims.

As estimates, these valuations could create false-positive outcomes (*i.e.,* inaccurately valuing borrower defense claims could result in an otherwise financially responsible institution inappropriately providing financial protection) and would impose a significant burden on the Department to monitor and analyze the potential impact of unanalyzed borrower defense claims. Similarly, outside groups could be encouraged to manipulate borrowers to file unjustified borrower defense claims, or could do so on behalf of borrowers, simply to create a financial trigger that will negatively impact the institution, even if the borrower defense claims are ultimately found to have no merit. As a result, we did not propose adopting either of the discretionary triggers related to pending or potential borrower defense claims in the 2018 NPRM and do not incorporate them into these final regulations.

In sum, valuing the liability accurately and objectively is critical in assessing, through the composite score calculation, whether lawsuits or claims have an adverse impact on the financial condition of an institution that justifies requiring the institution to secure a letter of credit or other financial protection. We believe that valuation is best done by using the actual amount of the liability incurred by the institution and would appropriately balance the Department's administrative burden in monitoring an institution's financial condition and safeguard the taxpayers' interest in the Federal student aid programs.

We also accordingly rescind the reporting requirements in the 2016 final regulations related to pending lawsuits. Instead, we require an institution to notify the Department no later than 10 days after it incurs a liability arising from a settlement, a final judgement arising from a judicial action, or a final determination arising from an administrative proceeding initiated by a Federal or State entity. We note that in the preamble to 2018 NPRM,[156] the Department proposed as triggering events a liability arising from (1) borrower defense to repayment discharges granted by the Secretary or (2) a final judgment or determination from an administrative or judicial action or proceeding initiated by a Federal or State entity. We clarify in these regulations that a judgment or determination becomes final when the institution does not appeal, or has exhausted its appeals, of that judgement or determination. In addition, we note that the Department initiates an administrative action whenever it seeks reimbursement for a liability arising from borrower defense to repayment discharges and that action results in a final determination. Consequently, we have incorporated the proposed borrower defense trigger as part of the general trigger for liabilities from final determinations under § 668.171(c)(1)(i)(A). Finally, in the 2016 Final Regulations, the trigger, in § 668.171(c)(1)(i), specifically identified liabilities incurred by an institution from settlements. Although settlements were not likewise identified in the 2018 NPRM, we intended to account for that outcome in proposed § 668.171(c)(1)(i)(B). To avoid confusion, we clarify in these regulations that settlements are part of that trigger.

In the 2018 NPRM, the Department proposed that a liability from a final judgment or determination arising from an administrative or judicial action or proceeding should constitute a mandatory trigger. The Department is revising § 668.171(c)(1)(i)(A) to more specifically describe the type of administrative or judicial action or proceeding that gives rise to the trigger. As previously noted, an administrative or judicial proceeding must be initiated by a Federal or State entity. With respect to an administrative action or proceeding initiated by a Federal or State entity, the Department further specifies that the determination must be made only after an institution had notice and an opportunity to submit its position before a hearing official because the institution should receive due process protections in any such administrative action or proceeding initiated by a Federal or State entity.

Changes: We are revising § 668.171(c)(1) to provide that liabilities incurred by an institution include those arising from a settlement, final judgment, or final determination from an administrative or judicial action or proceeding initiated by a Federal or State entity. In addition, we establish that a judgment or determination becomes final when the institution does not appeal or has exhausted its appeals of that judgment or determination.

Section 668.171(d)(1), Accrediting Agency Actions

Comments: Many commenters supported the proposed accrediting agency trigger in § 668.171(d)(1) of the 2018 NPRM and the Department's willingness to work with an institution and its accreditor to determine whether an event has or will have a material adverse effect on the institution. The commenters agreed that a show cause order that would lead to the withdrawal, revocation, or suspension of an institution's accreditation was an appropriate discretionary triggering event. Some commenters suggested that in addition to a show cause order, the trigger should apply to instances where an accrediting agency places an institution on probation or similar status. Other commenters believed that the accrediting agency trigger should be mandatory instead of discretionary.

Some commenters urged the Department to retain the accrediting agency trigger in current § 668.171(c)(1)(iii) where an institution

[156] 83 FR 37271.

is not financially responsible if it is required by its accrediting agency to submit a teach-out plan.

Discussion: We agree with commenters that the trigger should be revised to include the phrase ''probation or similar status'' as that action by an accrediting agency may have the same effect as a show cause order. Instead of presuming the action will have a materially adverse effect, as a discretionary trigger, we would first obtain information about why the accrediting agency issued the show cause order or placed the institution on a probationary status, and the time within which the agency requires or allows the institution to come into compliance with its standards. The Department would then determine whether the accrediting agency action will likely have an adverse effect on the institution's financial condition depending on the nature or severity of the violations that precipitated that action and the compliance timeframe.

Under the trigger in current § 668.171(c)(1)(iii), where an institution notifies the Department whenever its accrediting agency requires a teach-out plan for a reason described in § 602.24(c)(1) that could result in the institution closing or closing one or more of its locations, the Department recalculates the institution's composite score based on the loss of title IV funds received by students attending the closed location during its most recently completed fiscal year, and by reducing the expenses associated with providing programs to those students.

While the Department can determine the amount of the title IV funds received by students in those programs, and that amount could serve as a reasonable proxy for lost revenue, determining the reduction in expenses associated with not providing the programs is less certain.

Under current appendix C, the associated expense allowance is calculated by dividing the Cost of Goods Sold by the Operating Income and multiplying that result by the amount of title IV funds received by students at the affected location. However, the level of detail needed to accurately derive the expenses associated with providing a program, particularly at a location of the institution, is typically not contained or disclosed in an institution's audited financial statements. While the Cost of Goods Sold approximates those expenses at the parent level, it does not reflect all of them, and attempting to more accurately associate expenses at the location level would require additional, unaudited information from the institution.

As noted in the discussion for pending lawsuits and borrower defense claims, incorrectly valuing the amount used in recalculating the composite score may result in imposing unnecessary financial burdens on an institution that, in this case, could cause the institution to forgo providing or executing a teach-out.

Changes: We are revising § 668.171(d)(1)(iv) to include the phrase ''probation order or similar action.''

Section 668.171(c)(1)(i)(B), Withdrawal of Owner's Equity

Comments: Commenters generally supported the mandatory trigger relating to the withdrawal of owner's equity.

One commenter believed that in recalculating the composite score for a withdrawal of owner's equity, the Department should, in addition to decreasing modified equity by the amount of the withdrawal, also adjust the equity ratio by decreasing total assets.

Discussion: The purpose of this trigger, is to identify instances where the withdrawal or use of resources would likely cause an institution whose financial condition is already precarious (*i.e.,* an institution with a composite of less than 1.5) to fail the composite score standard. For this purpose, total assets in the equity ratio would not be reduced by any transaction associated with capital distributions or related party receivables. For capital distributions, the initial accounting transaction recorded in the institution's financial records would increase liabilities and reduce equity. Consequently, there would be no reduction in assets for these transactions.

The 2016 final regulations were not clear on what the Department meant by withdrawal of owner's equity. Withdrawal of owner's equity includes distributions of capital and related party transactions for the purposes of this trigger. In these regulations, we distinguish between two types of capital distributions—the equivalent of wages in a sole proprietorship or partnership, and dividends or return of capital.

Under the 2018 NPRM, a sole proprietorship or partnership would be required to report every distribution of the equivalent of wages. However, in view of the comments relating to the need for, and burden associated with, reporting the occurrence of the triggering events, we establish in these regulations that, in accordance with procedures established by the Secretary, an affected institution must report no later than 10 days after it is informed that its composite score is below a 1.5, the total amount of wage equivalent distributions it made during the fiscal year associated with that composite score. As long as the institution does not make wage-equivalent distributions in excess of 150 percent of that amount during its current fiscal year and for six months into its subsequent fiscal year, we will not require the institution to report any of those distributions for that 18-month period.

However, if the institution makes wage-equivalent distributions in excess of 150 percent of the reported amount at any time during the 18-month period, the institution must report the amount of each of those distributions within 10 days, and the Department will recalculate the institution's composite score based on the cumulative amount of the actual distributions. Because a proprietary institution may submit its financial statement audits to the Department up to six months after the end of its fiscal year, the Department will not know the actual amount of wage-equivalent distributions the institution made during its most recently completed fiscal year until we receive those audits.

In addition, like other triggers, we account for the occurrence of events that are not yet reflected in an institution's financial statement audits. Therefore, the 18-month period consists of the 12 months in the institution's current fiscal year plus the six months of its subsequent fiscal year that transpire before the institution submits its financial statement audits. The Department believes this approach will reduce, or eliminate entirely, the burden that most institutions would have incurred under the 2018 NPRM, while at the same time providing the Department the means to assess the actions of those institutions that are most likely to fail the composite score standard because of this trigger.

With regard to distributions of dividends or return of capital, an institution must report the amount of any dividend once declared, and the amount of any return of capital once approved, no later than 10 days after the respective event occurs. The Department will use that amount to recalculate the institution's composite score.

While we recognize that related party receivables do not impact equity, *per se,* any increase in those receivables reduces the liquid assets available to an institution to meet its financial obligations.

Therefore, in keeping with the purpose of this trigger, except for transfers between entities in an affiliated group as provided under § 668.171(c), an institution must report

any increases in the amount of related party receivables that occur during its fiscal year, regardless of whether those receivables are secured or unsecured. The Department will use the reported amount to recalculate the composite score.

Changes: We have revised § 668.171(c)(1)(i)(B) to include capital distributions that are the equivalent of wages in a sole proprietorship or partnership as an example of an event under the trigger. We also revised § 668.171(f)(1)(ii)(A) to provide that for distributions akin to wages, an affected institution must report the total amount of wage-equivalent distributions that it made during its prior fiscal year and is not required to report any wage-equivalent distributions that it makes during its current fiscal year or the first six months of its subsequent fiscal year, if the total amount of those distributions does not exceed 150 percent of the amount reported by the institution. We have also changed the regulation to require that the institution report such wage-equivalent distributions, if applicable, no later than 10 days after the date the Secretary notifies the institution that its composite score is less than 1.5.

We have clarified in § 668.171(c)(1)(i)(B) that a dividend or a return of capital may be an event under the trigger. We similarly clarify in § 668.171(f)(1)(B), that a distribution of dividends, or a return of capital, must be reported no later than 10 days after the dividends are declared, or the return of capital is approved. In addition, we establish that an institution must report a related party receivable no later than 10 days after it occurs.

Section 668.171(c)(2), SEC and Exchange Violations

Comments: One commenter contended that the mandatory trigger with respect to the SEC does not provide a valid correlation with respect to an institution's ability to satisfy its financial obligations. The commenter noted that the correlation that ED identified in the 2018 NPRM is misplaced. This commenter asserted that the SEC may delist the stock of an institution as a result of concerns about governance that are not indicative of a publicly-traded institution's financial health. Similarly, the failure of an institution to file a report does not necessarily reflect that the institution is unable to meet its financial or administrative obligations as the report may have been filed late for reasons unrelated to the institution's financial condition or administrative obligations. For these reasons, the commenter encouraged the Secretary to avoid classifying the SEC and exchange actions as mandatory triggering events and proposed a different mandatory trigger.

Discussion: After careful consideration of the comments, we have decided to keep the mandatory triggers for publicly traded institutions.

The commenter raises a valid concern that the failure of an institution to file a report does not necessarily reflect that the institution is unable to meet its financial or administrative obligations, as the filing may have been filed late for reasons unrelated to the institution's financial condition. This is particularly true where a company files the late report within a relatively short time after the original or extended due date and is late only with respect to a single report. Filing late could also be due to unforeseen circumstances such as the individual required to sign the report is unavailable, an unpredictable circumstance with an institution's auditors, or the need to address a financial restatement done for technical reasons.

We do not adopt the commenter's suggestions regarding § 668.171(c)(B)(2)(i) and (c)(B)(2)(ii). The commenters are correct that a delisting does not necessarily mean that an institution has financial problems, but it could mean that it does. Even more concerning, delisting could be a prelude to bankruptcy. These actions are likely to impair an institution's ability to raise capital and that potential consequence calls into question the viability of the institution.

We also note that the SEC and stock exchange violations triggers existed in the 2016 final regulations, at § 668.171(e) (2017). Under those regulations, a warning by the SEC that it may suspend trading on the institution's stock would render the institution not financially responsible. By limiting, in these regulations, the trigger to SEC orders as opposed to warnings, the trigger is more specifically tailored to identify institutions with a high likelihood of financial difficulties. The exchange action component of the trigger in these regulations is similarly more tailored than the 2016 final regulations. Under the 2016 final regulations, an institution would not be financially responsible if the exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements or the institution's stock is delisted. Under these regulations, the Department will limit its determination that an institution is not financially responsible to those situations where the institution's stock has actually been delisted.

We note that the occurrence of a mandatory triggering event does not automatically precipitate financial protection, as alluded to by the commenter in requesting the trigger to be reclassified.

As a mandatory trigger, the burden is on the institution to demonstrate, at the time it reports an SEC or exchange action, that the action does not or will not have an adverse material effect on its financial condition or ability to continue operations as a going concern, and a favorable demonstration would obviate the need for financial protection. We see no utility in reclassifying this trigger as discretionary because it is reasonable for the Department to rely on the expertise of the SEC or exchange about actions stemming from violations of their requirements that may have an immediate and severe impact on the institution—the responsibility is rightly on the institution to demonstrate the contrary to the Department.

Changes: None.

Section 668.171(d)(4) and (6), 90/10 Revenue and Cohort Default Rate (CDR) Triggering Events

Comments: Some commenters believe that the cohort default rate (CDR) and 90/10 triggers are unrelated to an institution's financial stability and should be removed. Other commenters urged the Department to classify both of these events as mandatory instead of discretionary triggers. Along the same lines, another commenter believed that the statutory requirements governing the loss of title IV eligibility stemming from a 90/10 or cohort default rate failure do not require or allow the Department to consider alternative remedies or mitigating circumstances. The commenter asserted that there was no reasonable basis on which the Department could determine that no risk exists when institutions fail the 90/10 or CDR triggers, and, therefore, it would be arbitrary for the Department to determine on a case-by-case basis which of the failing institutions that would be required to provide financial protection. To ensure that the Department upholds the statutory requirements for 90/10 and CDR, and financial responsibility in the event of closure, the commenter urged the Department to classify the failure of both events as mandatory triggers.

Discussion: We disagree that the triggers are unrelated to an institution's financial stability. As discussed previously under the heading ''Triggering Events, General,'' if either of these triggering events occur, an

institution may be one year away from losing all or most of its eligibility to participate in the title IV programs. That loss would likely have a significant adverse impact on the institution's financial condition or its ability to continue as a going concern, and either outcome may warrant financial protection.

The current regulations require an institution that fails 90/10 or whose cohort default rates are more than 30 percent for two consecutive years to provide a letter of credit or other financial protection to the Department. However, rather than presuming that financial protection is required, we believe it is more appropriate to reclassify these triggers as discretionary triggers to allow the Department to review the institution's efforts to remedy or mitigate the causes for its 90/10 or CDR failure or to assess the extent to which there were anomalous or mitigating circumstances precipitating these triggering events, before determining whether financial protection for the Department in the form of a LOC is warranted. Part of that review is evaluating the institution's response to the triggering event to determine whether a subsequent failure is likely to occur, based on actions the institution is taking to mitigate its dependence on title IV funds, the extent to which a loss of title IV funds (from either 90/10 or CDR failure) will affect its financial condition or ability to continue as a going concern, or whether the institution has challenged or appealed one or more of its default rates.

Contrary to the assertion made by the commenter, this case-by-case review forms the basis needed for the Department to proceed under these regulations with issuing a determination regarding whether the institution is financially responsible. We wish to clarify that the Department's review or consideration of circumstances relating to whether a 90/10 or CDR failure affects an institution's financial responsibility has no bearing on how the statutory requirements are applied or the consequences of those requirements.

Changes: None.

Section 668.171(d)(2), Violations of Loan Agreements

Comments: Some commenters were concerned with the amount of discretion the Department has in situations where a creditor has affirmatively determined that a loan or credit is not at risk and suggested that the Department qualify the trigger so it does not apply in cases where the violation is waived by the creditor. Other commenters argued that an institution should have ample time to remedy a situation with a creditor before reporting it to the Department. On the other hand, some commenters questioned why this was a discretionary trigger or a trigger at all, noting the requirement that an institution be current in its debt payments currently serves as a baseline standard for determining whether an institution is financially responsible and the Department did not provide any evidence, analysis, or examples of existing loan violations that would not constitute a threat to the overall financial health of an institution.

Discussion: A violation of a loan agreement is a discretionary trigger under the existing regulations, and we continue to believe that this trigger will assist the Department in fulfilling its objective of identifying and acting on signs of financial distress. With regard to the comments on whether the Department should exempt the reporting of a loan violation in cases where the creditor waives the violation or provide some time for an institution to remedy a loan violation before it reports the violation, we believe that all violations are potentially significant and must be reported, regardless of whether they are waived or remedied. In cases where the creditor waives a violation without imposing new requirements or restrictions, the institution simply reports that outcome. Although we decline to define the waiver as a cure for the violation, we typically would accept the waiver if it was obtained promptly by the institution during the then-current fiscal year. Institutions that violate a debt provision without obtaining a waiver are also at risk that the total debt may be called by the creditor. We are concerned about allowing time for an institution to remedy a loan violation because that defeats or lessens the utility of allowing the Department to act contemporaneously in response to potentially significant issues.

With respect to the comment that instead of establishing a discretionary trigger, the Department should retain as a ''baseline standard'' the requirement that an institution is current in its debt payments, we note that the trigger for loan violations is currently discretionary and the proposed provisions for this trigger are the same as they are in the current regulations under 668.171(g)(6). The baseline standard the commenters refer to was part of regulations that were in effect before the 2016 final regulations.

Nevertheless, the commenters incorrectly presumed that the ''baseline standard'' is somehow more robust or better than the trigger on loan violations. To the contrary, under the ''baseline'' the Department would not be aware that an institution violated a loan agreement unless: (1) It was identified in a footnote to the institution's audited financial statements, which are submitted to the Department six to nine months after the institution's fiscal year; or (2) the institution failed to make a payment under a loan obligation for 120 days and the creditor filed suit to recover its funds. As a discretionary trigger, the Department will be aware of a loan violation within 10 days of when the creditor notifies the institution, regardless of whether the creditor filed suit, and can assess contemporaneously the consequences of that violation.

Changes: None.

Section 668.171(d)(3), State Licensing or Authorization

Comments: Some commenters argued that the current State licensing or authorization trigger under § 668.171(g)(2) (2017) is too broad because it requires an institution to report any violation of State requirements and concluded that it could have the unintended consequence of requiring an institution to close precipitously. The commenters believed that the proposed trigger takes a more precise approach by requiring an institution to report only those violations that could lead to the institution losing its licensing or authorization.

On the other hand, a few commenters believed it was critical for the Department to get information on all State actions and review those actions on a case-by-case basis to determine whether financial protection should be required.

Other commenters suggested revising the trigger to state that ''the institution is notified by a State licensing or authorization agency that its license or authorization to operate has been or is likely to be withdrawn or terminated for failing to meet one of the agency's requirements.'' The commenters note that State authorizing entities often include boilerplate language in notices of noncompliance that indicates that if the noncompliance is not remedied, authorization can be lost. The commenters believed that under proposed language, a notice that included a single instance of immaterial noncompliance would still have to be reported if the State included that boilerplate language.

Other commenters asserted that the Department should define ''state licensing or authorizing agency'' to only

refer to the primary State agency responsible for State authorization, not specialized State agencies, such as boards of nursing.

Discussion: Under the 2016 final regulations, at § 668.171(g)(2), the Department requires institutions to report any citation by a State licensing or authorizing agency for failing State or agency requirements. As we stated in the 2018 NPRM, we believe that a more targeted approach is appropriate for these regulations to better identify State or agency actions that are likely to have an adverse financial impact on institutions and to reduce reporting burden on institutions and burden on the Department in reviewing citations. We see little benefit in requiring an institution to report, and for the Department to review, violations of State or agency requirements that have no bearing on the institution's ability to operate and offer programs in the State. Doing so may provide some insight for program review risk assessments, but would not have a material adverse effect on an institution's ability to operate. A notice from the State contemplating the termination of an institution's authorization or licensure, which could result in the institution closing or discontinuing programs, satisfies that purpose without imposing unnecessary burdens on the institution or the Department.

While we appreciate the commenters' language suggestions, the Department must be able to react to any State licensing or authorizing agency actions that are required to be reported, regardless of whether those actions are qualified or prefaced by boilerplate language. If the Department allows an institution to determine that a termination notice from the State licensing or authorizing agency stems from immaterial noncompliance, as suggested by the commenter, there is a potential that significant actions might not be reported if they were misunderstood or mischaracterized by the institution as being immaterial. In cases where an institution believes that the State or agency action is not material, it may provide an explanation to that effect when it reports that action to the Department.

With regard to the suggestion that the Department define the term ''State licensing or authorizing agency'' to be the only cognizant entity, we believe that narrowing the meaning of the term to exclude other State agencies, such as boards of nursing, would inappropriately weaken the effectiveness of trigger, particularly in cases where programs are licensed by those other agencies or boards.

Changes: None.

Reporting Requirements, § 668.161(f)

Comments: Many commenters appreciated that the Department proposed to allow institutions to provide an explanation or information pertaining to a triggering event at the time that event is reported and then again in response to a determination made by the Department.

Some commenters suggested that an institution should be allowed 30 days, instead of 10 days, to report a triggering event. These commenters argued that various offices within an institution might be involved and have contemporaneous knowledge of a triggering event, but individuals dealing with an unrelated agency action, such as renegotiated debt, are unlikely to be cognizant of the Department's reporting deadline.

Discussion: The Department will not adopt the commenters' proposal. First, we note that under the existing regulations, institutions also have a 10-day reporting window from the date of each of the triggering events, except for the 90/10 trigger (which is also the case in these regulations). As a result, we believe that institutions will have appropriate processes and procedures in place by the time these regulations are effective to allow for timely reporting.

Second, there are a limited number of triggering events, not all of which apply to every institution, and institutions should delegate authority to one or more individuals to identify triggering events and ensure that reporting deadlines are met. The 10-day reporting deadline is needed to alert the Department timely of triggering events that may have serious consequences for institutions, students, and taxpayers, and for the Department to take timely action to mitigate the impact of those consequences.

Third, if, as the commenter asserts, the individuals in various campus offices that are responsible for actions related to a triggering event would not be aware of the reporting deadline, the institution has an obligation to make sure that its staff understand triggering events and the reporting deadlines associated with those triggers.

Changes: None.

Section 668.172, Financial Ratios

Procedural Concerns Regarding the Financial Responsibility Subcommittee

Comments: A commenter noted that the formation of the Financial Responsibility Subcommittee, which consisted of negotiators and individuals selected by the Department who were not negotiators, departed from typical practice where the negotiators initiate the formation of a subcommittee comprised of negotiators during the negotiations. The commenter contended that because subcommittee members were not seated on the full committee and the subcommittee meetings were not open to the public, there was not a fulsome discussion of the issues by the full committee.

The commenter asserted that the Department seemed to have acknowledged that the closed-door sessions were inappropriate by announcing that the sessions for two future subcommittees would be livestreamed. In addition, the commenter was concerned that the Department seated an individual with pecuniary interests in financial responsibility as both a negotiator and a subcommittee member but did not acknowledge that the individual was from an institution that had an active issue with the Department on subcommittee matters. The commenter asserted that because the individual's institution would receive favorable treatment under the proposed regulations, this apparent conflict of interest should have been avoided, or clearly identified prior to start of the rulemaking. In short, the commenter argued that the Department did not follow the appropriate procedures under the APA, and other requirements, in promulgating the proposed changes to the composite score, and that the Department should withdraw those changes.

Discussion: Neither the APA nor the HEA stipulates the precise procedures the Department must use when conducting negotiated rulemaking, and the Department has the discretion to use different procedures to fit the contours of different negotiated rulemakings. Thus, the fact that the Department's approach to establishing the subcommittee differed from past practice is not indicative of impropriety or insufficiency.

In this case, the Department knew prior to commencement of negotiations that, in order to facilitate full public participation on applicable financial accounting and reporting standards promulgated by the Financial Accounting Standards Board, subcommittee members with specific expertise in these matters would be needed. For this reason, in the **Federal Register** notice of intent to establish negotiated rulemaking committees, we specifically sought the participation of individuals with certain knowledge. As in the past, following its meetings, the subcommittee presented its recommendations to the main

negotiated rulemaking committee for a final vote. The evolution of the Department's practices in subsequent negotiated rulemakings reflects its efforts to best provide for negotiation of the complex issues at hand, but does not reduce, or call into question, the legal sufficiency of past practices.

Generally, every institution with a representative has an interest in the outcomes of regulations that govern their participation in the Federal student aid programs. For the representative that participated on the subcommittee, the institution met the financial responsibility requirements for prior years by providing a letter of credit while raising, along with other institutions, an objection as to the Department's calculation of its composite score. There was no unresolved issue concerning this institution's compliance with existing Department requirements related to the calculation of its composite score, and no conflict of interest with respect to the participation by that institution's representative both on the committee and in the subcommittee.

Changes: None.

Section 668.91, Initial and Final Decisions

Comments: None.

Discussion: As discussed in the 2018 NPRM, the Department's proposed regulations would update the regulations to reflect the language in proposed 668.175 and generally represent technical changes to the 2016 final regulations to track the actions and events in proposed § 668.171. In addition, after further review, we have determined that an insurer would likely be unable or unwilling to provide a statement that an institution is covered for the full or partial amount of a liability arising from a triggering event in § 668.171, as required under the 2016 Final Regulations and the 2018 NPRM. Therefore, we are revising § 668.91(a)(3)(iii)(A) to provide that an institution may demonstrate that it has insurance that will cover the risk posed by the triggering event by presenting the Department with a copy of the insurance policy that makes clear the institution's coverage. Finally, we clarify that an institution may demonstrate for a mandatory or discretionary triggering event that the amount of the letter of credit or other financial protection demanded by the Department is not warranted for a reason described in § 668.91(a)(3)(iii)(A).

Changes: We are revising § 668.91(a)(3)(iii)(A) to clarify that it applies to mandatory and discretionary triggering events and provide than an institution may provide a copy of its insurance policy demonstrating that it has insurance to cover or partially cover the trigger-associated risk.

Section 668.172(c), Excluded Items, Termination of the Perkins Loan Program

Comments: Commenters noted that, as result of terminating the Perkins Loan Program, some institutions may elect to liquidate their portfolios and assign all loans to the Department for servicing. The commenters believed that a liquidation decision can result in a one-time loss that a non-profit institution will likely display separately or as a non-operating loss on its financial statements (''Statement of Activities'').

Although the commenters asked the Department to clarify how it will treat Perkins Loan Program liquidation losses, they argued than an institution should not be penalized for the dissolution of the Perkins Loan Program and, thus, recommended that the Department consider non-operating losses related to a Perkins liquidation to be infrequent and unusual in nature and, therefore, excluded from the calculation of the composite score.

Discussion: The liquidation of the Perkins Loan portfolio would normally not result in a loss to an institution. Generally, a loss would only occur if the institution had to purchase loans that were not acceptable for assignment. The Department does not believe that the administration of title IV, HEA programs should be excluded from the composite score computation. The liquidation of the Perkins Loan portfolio would result in removal of the receivables by assignment to the Department. The cash would be returned to the Department or be released from restriction, which would not result in a loss, and only loans that are not acceptable for assignment would result in any loss to the institution, because it would be required to purchase the loans and those losses should be reflected in the composite score.

Changes: None.

Section 668.172(d), Leases

Comments: Many commenters supported the proposal that the Department could calculate a composite score for an institution under the new requirements issued by the Financial Accounting Standards Board (FASB ASU 2016–02, ASC 842 (Leases)), and at the institution's request, a second composite score that excludes the lease liabilities and right to use assets that the institution is otherwise required to report under these new requirements.

Although many commenters appreciated the Department's recognition of the complexity and impact of the FASB changes, they encouraged the Department to guarantee that it would calculate the two composite scores for a minimum of six years, without regard to whether the methodology is updated through rulemaking, to provide stability and ensure that institutions have time to adjust operations.

Other commenters urged the Department to simply calculate the two composite scores until the methodology is updated.

Some commenters argued that since the Department did not propose any consequences for an institution that fails one of the two composite scores and offered no justification for permitting all operating leases to be excluded, even those entered into after the rule takes effect, the Department should eliminate, or at least shorten, the transition period and align the FASB implementation timeline to the effective date of the regulations. However, during any transition period the Department may offer, the commenters urged the Department to hold accountable any institution that fails either of the two composite scores. Specifically, any institution with a failing composite score under the new FASB requirements should be placed on heightened cash monitoring, be required to provide timely financial reporting, and/or be required to provide financial protection.

Commenters also wrote that the Department should eliminate, or at least shorten, the transition period and align the FASB implementation timeline to the effective date of the regulations. However, during any transition period offered, the commenters urged the Department to hold any institution accountable that fails either of the two composite scores by placing the institution on heightened cash monitoring, requiring timely financial reporting, and/or compelling financial protection.

Other commenters noted that the proposed transition for leases differed from the Subcommittee recommendation that the six-year transition applied only to operating leases in effect during the initial reporting period following the effective date of these regulations. The commenters stated that since 2010, all institutions should have known FASB was preparing to change the lease standards.

Another commenter objected to the transition period for leases arguing that the Department had provided no data to

support this approach or rationale for why a six-year period was appropriate.

Discussion: In view of the comments regarding the length, or application, of the transition period, the use of two composite scores, and the need to align the FASB implementation timeline to these regulations, we conclude that it is reasonable for the Department to calculate one composite score for an institution by grandfathering in leases entered into prior to December 15, 2018 (pre-implementation leases) and applying Accounting Standards Update (ASU) 2016–02, Accounting Standards Codification (ASC) 842 (Leases) to any leases entered into on or after that date (post-implementation leases).

The Department will grandfather in leases if the institution provides adequate information to the Department in the Supplemental Schedule and a note in, or on the face of, the audited financial statements on the leases it entered into prior to December 15, 2018 and will treat those leases as they have been treated prior to the requirements of ASU 2016–02. That is, the amount of any right of use asset and associated liability will be removed from the balance sheet or statement of financial position. Because the value of leases entered into prior to December 15, 2018, can only decrease, any increase in the value of leases will be considered a new lease and ASU 2016–02 requirements will apply to those leases. Any leases entered into on or after December 15, 2018, will be treated as required under ASU 2016–02.

In establishing this approach, the Department considered three factors: That FASB changes an accounting standard when it recognizes that the standard is obsolete or no longer addresses the economic reality that it seeks to address; that an institution made business decisions prior to the requirements of ASU 2016–02; and that changes to the standards for leases could have a detrimental impact on an institution's composite score even in cases where the underlying financial condition of the institution may not have changed.

The Department believes that calculating the composite score by grandfathering in existing leases and applying the FASB standards to new leases strikes an appropriate balance between these factors.

While the subcommittee specified a transition period during which the Department would allow leases in existence as of the effective date of the regulations to be treated the way leases were treated prior to the requirements of ASU 2016–02, doing so would mitigate but not eliminate the impact on all institutions for business decisions they made prior to the requirements of ASU 2016–02. In addition, the Department could not identify an empirical basis to support a six-year timeframe, as opposed to a different timeframe, and therefore could not include the six-year period in this final rule.

Rather than a time-limited transition period, the Department believes it is reasonable to grandfather in existing leases by establishing in these regulations that leases entered into prior to December 15, 2018 are treated as they would have been treated prior to ASU 2016–02 until the balance of those leases is zero. Because an institution is required to value the right-of-use assets and associated liabilities based on whether it will exercise options and other lease clauses in existence as of the effective date of ASU 2016–02, any leases entered into prior to December 15, 2018, and treated as they would have been prior to ASU 2016–02 for the composite score, cannot increase and would only decrease over time to zero.

The Department establishes December 15, 2018, as the effective date for new leases because that is the first effective date of ASU 2016–02 for public entities for fiscal years beginning after December 15, 2018. The Department recognizes that not all institutions will be required to implement ASU 2016–02 for fiscal years beginning after December 15, 2018, but in an effort to treat all institutions fairly, the Department will apply the first required implementation date to all institutions.

Changes: We are revising 668.172(d) to provide that the Secretary accounts for operating leases by applying the new FASB standards to all leases the institution has entered into on or after December 15, 2018 (post-implementation leases), as specified in the Supplemental Schedule, and treating leases the institution entered into prior to December 15, 2018 (pre-implementation leases), as they would have been treated prior to the new FASB requirements. An institution must provide information about all leases on the Supplemental Schedule, and in a note, or on the face of its audited financial statements. In addition, any adjustments, such as any options exercised by the institution to extend the life of a pre-implementation lease, are accounted for as post-implementation leases.

Section 668.172, Appendix A and B

Format

Comments: Some commenters found the Appendices confusing and difficult to read, suggesting that a consistently formatted layout with proper labeling is needed to improve usability. In addition, the commenters noted that in Section 3 of Appendix B, the Department mistakenly labeled some of the components of the ratios and their corresponding line numbers and in Appendix B, Section 1, and that the value of property, plant, and equipment (PP&E) is net of depreciation, not appreciation.

A few commenters suggested that the formula for expendable net assets begin with ''total net assets'' instead of the proposed construction of ''net assets without donor restrictions + net assets with donor restrictions'' to alleviate the potential misinterpretation about the sub-groupings of ''net assets with donor restrictions.''

Discussion: We appreciate the comments that identified errors in the Appendices, and we will correct those errors. With regard to using ''Total net assets'' as opposed to ''Net assets with donor restrictions plus Net assets without donor restrictions'' to arrive at Expendable net assets, the commenters did not explain how any misinterpretations could occur. Because Net assets with donor restrictions and Net assets without donor restrictions are taken directly from the face of the Statement of Financial Position, it is unclear to us how these numbers can be misinterpreted.

Changes: Appendix A and B are revised to correct the labels and line numbers noted by the commenters, and to otherwise improve usability and clarity.

Long-Term Debt

Comments: Some commenters disagreed with the proposal that if an institution wishes to include debt obtained for long-term purposes in total debt, the institution must disclose in its financial statements that the debt, including long-term lines of credit, exceeds twelve months and was used to fund capitalized assets. Under that proposal, the debt disclosure must include the issue date, term, nature of capitalized amounts, and amounts capitalized. Otherwise, the Department would exclude from debt obtained for long-term purposes the amount of any other debt, including long-term lines of credit used to fund operations, in calculating the numerator of the Primary Reserve Ratio.

One commenter believed that a corresponding change needs to be made to Total Assets that would allow any cash balances, or assets related to the excluded borrowing, to also be excluded. The commenter argued that without this change, the composite

score would be unbalanced and would unfairly penalize an institution that utilizes debt to finance capital improvements, ongoing operations, and growth opportunities.

Discussion: The Department believes that a long-term debt disclosure is needed because it provides the information necessary to ensure that the primary reserve ratio is calculated accurately for all institutions and helps to identify and guard against those institutions that attempt to manipulate their composite scores. Long-term debt up to the value of Property, Plant and Equipment (PP&E) is treated favorably in the composite score calculation because that debt is intended to reflect investments by an institution in those items.

The Department disagrees that any adjustment to total assets needs to be made, as total assets are not an element of the primary reserve ratio. The issue of debt obtained for long-term purposes is central only to the primary reserve ratio and for determining the appropriate amount of debt obtained for long-term purposes that is related and limited to PP&E under that ratio. The Department is establishing how to determine the correct amount of debt obtained for long-term purposes for calculating the primary reserve ratio.

Changes: None.

Comments: Some commenters stated that the proposed treatment of long-term debt in the 2018 NPRM was not discussed, or discussed thoroughly enough, by the Subcommittee or the main negotiating Committee and should be withdrawn.

Other commenters noted that the discussions with the Subcommittee centered on closing a loophole on the use of long-term lines of credit that some institutions manipulated to increase their composite scores. To this end, the Subcommittee recommended that long-term lines of credit may be used to calculate adjusted equity or expendable net assets if the lines of credit are identified separately in the Supplemental Schedule with accompanying information specifying the issue date, term, nature of capitalized amounts, and amounts capitalized.

The commenters argued that instead of adopting the Subcommittee's recommendation, the Department's proposal fundamentally changes the definition of all debt obtained for long-term purposes, effectively repealing the guidance provided in Dear Colleague Letter (DCL) GEN–03–08.

Some commenters suggested that the Department phase-in or create a transition period before requiring institutions to link long-term debt to the acquisition of PP&E. The commenters noted that some institutions have large investments in old and newly constructed buildings and hold long-term debt that directly or indirectly relates to brick and mortar. These commenters asserted that it can be challenging for institutions to show a direct relationship between issues of debt within all debt obtained for long-term purposes and capitalized asset acquisitions. The commenters identified a variety of factors that make this difficult, including institutional longevity, contributions that support PP&E payment and payout timing, variability in build, renovation, and maintenance schedules as well as debt consolidations, restructurings, and refinancing over decades.

Discussion: The discussions in the subcommittee centered around the abuse of long-term lines of credit and manipulation of the composite score in general. Based on those discussions and in developing these regulations, the Department determined that long-term notes payable should not be treated differently from long-term lines of credit.

Both can be used for the purpose of purchasing PP&E, including construction-in-progress (CIP), both can be used to fund investments or operations, and both can be used to manipulate the composite score if the purpose and use of the debt is not known. The Department's goal, as discussed in the Subcommittee meetings, is to limit or eliminate instances where institutions report long-term debt to manipulate their composite scores, and to include long-term debt related to PP&E and construction in progress (CIP) to compute an accurate composite score. The Department sees no reason to have different requirements for different types of debt. We believe the best approach is for all debt to be treated the same, except for short-term debt obtained for CIP which can be considered debt obtained for long-term purposes up to the amount of the CIP.

These regulations effectively repeal DCL GEN–03–08. Typically, no amount of PP&E would be included in a primary reserve ratio. However, at the time the financial responsibility regulations were originally developed, the community expressed concerns that institutions would be discouraged from investing in PP&E. To mitigate that concern, the Department provided in the regulations that long-term debt up to the amount of PP&E an institution reported would be added to the numerator of the primary reserve ratio, effectively crediting the institution for the long-term debt associated with a portion of the PP&E that had properly been subtracted from the numerator of the primary reserve ratio.

Over time, there has been significant manipulation of the composite score in reliance on DCL GEN–03–08, where the reported long-term debt was not associated with investments into an institution's PP&E and CIP. We believe that reverting back to the original intent of adding debt obtained for long-term purposes to the numerator of the primary reserve ratio is the proper approach because it results in a more accurate portrayal of an institution's financial health.

The Department agrees with the commenters that some type of phase-in or transition is appropriate to account for institutions that do not have the records to, or otherwise cannot, associate debt to PP&E acquired in the past under the guidance provided in DCL GEN–03–08.

In these regulations, we revise the calculation of the primary reserve ratio with regard to the amount of long-term debt that is included in debt obtained for long-term purposes and used as an offset to PP&E, including CIP and right-of-use assets. Specifically, we will consider the PP&E that an institution had prior to the effective date of these regulations (pre-implementation) and the additional PP&E it has acquired after that date (post-implementation). For this discussion, qualified debt refers to any post-implementation debt obtained for long-term purposes that is directly associated with PP&E acquired with that debt. Any debt obtained for long-term purposes post-implementation must be qualified debt.

Since institutions were not required under DCL GEN–03–08 to associate debt obtained for long-term purposes with capitalized assets and may not have the accounting records pre-implementation to associate debt with specific PP&E, in determining the amount of pre-implementation PP&E that is included in the primary reserve ratio, the Department will use the lesser of (1) the PP&E minus depreciation/amortization or other reductions, or (2) the qualified debt obtained for long-term purposes minus any payments or other reductions, as the amount of debt obtained for long-term purposes.

The basis for the pre-implementation PP&E and qualified debt will be the amounts reported in the institution's most recently accepted financial statement submitted to the Department prior to the effective date of these regulations. An institution must adjust the amount of pre-implementation debt by any payments or other reductions

and must also adjust the pre-implementation PP&E by any depreciation/amortization or other reductions in subsequent years.

Post-implementation debt is the amount of debt that an institution used to obtain PP&E since the end of the fiscal year of its most recently accepted financial statement submission to the Department prior to the effective date of these regulations less any payments or other reductions. An institution must adjust post-implementation debt by any debt obtained and associated with PP&E in subsequent years by any payments or other reductions. Similarly, the institution must also adjust post-implementation PP&E by any PP&E obtained in subsequent years and any depreciation/amortization or other reductions in subsequent years. Any refinancing or renegotiated debt cannot increase the amount of debt associated with previously purchased PP&E. No pre-implementation debt required to be disclosed can increase. For each debt to be considered for the composite score, the individual debts must be disclosed as described below.

The Department is revising the reporting on long-term debt to require that an institution must, in a note to its financial statements, clearly identify for each debt to be considered in the composite score for pre- and post-implementation long-term debt and PP&E net of depreciation or amortization and the amount of CIP and the related debt.

An institution must also disclose in a note to its financial statements, for each pre- and post-implementation debt, the terms of its notes and lines of credit that include the beginning balance, actual payments and repayment schedules, ending balance, and any other changes in its debt including lines of credit.

Changes: We are revising the definition of debt obtained for long-term purposes in Section 1 of Appendices A and B to reflect the amount of pre- and post-implementation long-term debt that can be included in the primary reserve ratio. The definition also provides that any amount of pre- and post-implementation debt obtained for long-term purposes that an institution wishes to be considered for the primary reserve ratio must be clearly presented or disclosed in the financial statements. We have also modified Section 3 of appendices A and B to show how the definition of qualified debt obtained for long-term purposes will be presented or disclosed by institutions.

Comments: Some commenters believed that access to a long-term line of credit reflects an institution's ability to access credit in the open market and argued that the institution should not be penalized for having access to credit unless it needs to post collateral to gain access to this credit. In addition, the commenters believed that long-term debt should be specifically tied to PP&E acquisitions in order to be added back in the computation of adjusted equity.

While long-term debt can be used specifically for PP&E acquisitions, the commenters noted that some institutions use cash to pay for PP&E acquisitions and decide later to obtain long-term debt in a future year using the assets purchased as collateral. The commenters asked whether this practice creates a disconnect if the assets are not acquired in the same year as the occurrence of the debt. In addition, if the long-term debt is secured by PP&E, the commenters questioned why it matters if the debt was specifically for the purchase of those assets. These commenters, and others, believed that the proposed changes relating to long-term debt should be removed and discussed as part of a broader negotiated rulemaking for the composite score.

Another commenter stated that the primary reserve ratio is intended to measure liquidity and argued that the acquisition of long-term debt that is immediately accessible (like a line of credit) is conclusive evidence of liquidity up to the amount of line. Therefore, the commenter reasoned that it does not matter whether the institution uses the funds from that line of credit for property, plant and equipment or anything else. The commenter posited that an institution should not have to draw down on the line of credit to get the benefit afforded long-term debt in the primary reserve ratio. As support for this position, the commenter cited a study.[157]

Discussion: The Department disagrees that an institution would be penalized for having access to credit. The question before the Department was the appropriate amount to use in the composite score calculation for debt obtained for long-term purposes. To the extent that the proceeds from a long-term line of credit were used to purchase PP&E and the amount used is still outstanding at the end of the institution's fiscal year, that amount is included in determining the amount of debt obtained for long-term purposes. Where PP&E is used as collateral for obtaining debt, that debt would not count as debt obtained for long-term purposes unless it is used to purchase other PP&E.

With regard to using cash to purchase PP&E, for the purposes of debt obtained for long-term purposes used in the primary reserve ratio, there is no long-term debt associated with those assets. When an institution later uses the PP&E as collateral, there is still no long-term debt associated with the purchase of those assets. Additionally, none of the debt obtained would count toward the primary reserve ratio unless the proceeds from the borrowing were used to purchase PP&E.

There is a difference in long-term debt being used to purchase PP&E and PP&E being used to secure long-term debt. For example, a long-term line of credit may be used to purchase furniture. There is no security interest by the creditor in the furniture, but the long-term line of credit was used to purchase PP&E and the amounts from the line of credit used to purchase the furniture that are still outstanding at the end of the institution's fiscal year would be considered debt obtained for long-term purposes. Conversely, an institution secures a loan using a building as collateral for the loan and then uses the proceeds to pay salaries and taxes. In this case, there is no debt obtained for long-term purposes because the proceeds of the loan were not used for the purchase of PP&E, a long-term purpose.

The Department does not agree that the issues surrounding long-term debt need to be part of a broader negotiated rulemaking for the composite score because the approach established in these regulations does not penalize institutions for decisions made prior to this regulation. We are grandfathering in existing long-term debt as reported under DCL GEN–03–08 and requiring only that new long-term debt must be associated with and used for PP&E.

The study cited by the commenter specifically states, ''Credit lines have a predetermined maturity. This implies that any drawn amount has to be repaid before the credit line matures, thus limiting the use of lines of credit for example for long term investments.'' The authors also state that lines of credit ''are normally issued with a stated purpose which restricts their possible uses.'' The primary reserve ratio, as a measure of liquidity, would normally not include any PP&E and no amount of debt obtained for long-term purposes would normally be added back to the numerator in determining Adjusted Equity or Expendable Net Assets. The original recommendation from the KPMG study which formed the basis for the Department's current financial

[157] Filippo Ippolito and Ander Perez, Credit Lines: The Other Side of Corporate Liquidity, Barcelona Graduate School of Economics, March 2012, available at: *https://www.barcelonagse.eu/sites/default/files/working_paper_pdfs/618.pdf.*

responsibility regulations excluded net PP&E from the Primary Reserve Ratio and had no provision for adding back debt obtained for long-term purposes. Regarding net PP&E and the Primary Reserve Ratio the KPMG study provided the following: ''The logic for excluding net investment in plant (net of accumulated depreciation) is twofold. First, plant assets are sunk costs to be used in future years by an institution to fulfill its mission. Plant assets will not normally be sold to produce cash since they will presumably be needed to support ongoing programs. In some instances, there is a lack of ready market to turn the assets into cash, even if they are not needed for operations. Second, excluding net plant assets is necessary to obtain a reasonable measure of liquid equity available to the institution on relatively short notice.''

(Methodology for Regulatory Test of Financial Responsibility Using Financial Ratios—December 1997)

In response to comments from the community that this treatment would influence institutions not to invest in PP&E, the Department provided that to the extent debt obtained for long-term purposes was used for PP&E, the Department would add such amounts back to Adjusted Equity or Expendable Net Assets up to the total amount of PP&E to encourage institutions to reinvest in themselves. To the extent that a long-term line of credit is allowed to be used for, and is used, for the purchase of PP&E, although there are limits to the use of lines of credit for long-term investments, that amount will be added back to Adjusted Equity or Expendable Net Assets as provided for in the regulations.

While a line of credit does provide resources for an institution to use to meet its needs prior to being drawn on, it is not reflected in the institution's financial statements. When a line of credit is drawn on, it is reflected as a liability in the financial statements. At the point that a line of credit is drawn on, that amount becomes a drain on other liquid resources of the institution. The mere existence of a line of credit is not proof of liquidity. If the line of credit is exhausted, there is no liquidity associated with that line of credit. An option for the Department given the manipulation of the Composite Score through the use of debt obtained for long-term purposes would have been to return to the original KPMG methodology and the way Primary Reserve Ratios are normally calculated in the financial community by excluding Net PP&E from Adjusted Equity or Expendable Net Assets and not adding back any debt obtained for long-term purposes associated with the Net PP&E. The Department wants to encourage institutions to reinvest in themselves, but also wants to curb manipulation of the composite score. The Department believes that its approach to debt obtained for long-term purposes accomplishes both goals.

Changes: None.

Comments: A few commenters believed the Department should consider any long-term debt obtained by an institution for the primary reserve ratio.

Discussion: The Department does not agree with the commenter's proposal. As discussed more thoroughly in the preamble to the NPRM, the Department's Office of Inspector General and the Government Accountability Office have both identified the use of long-term debt as one of the primary means of manipulating the composite score and these regulations are intended to reduce or eliminate that manipulation.

Changes: None.

Appendix A and B, Related Parties

Comments: For non-profit institutions, some commenters suggested that related party contributions receivables from board members should be included in secured related party receivables if there is no ''business relationship'' with board members.

Discussion: The commenters are asking the Department to change the regulatory requirements for related party transactions under 34 CFR 668.23(d). The requirements under those regulations were not included in the notice announcing the formation of the Subcommittee and, thus, are beyond the scope of these regulations.

Changes: None.

Appendix A and B, Construction in Progress

Comments: One commenter disagreed that CIP should be included as PP&E in the computation of adjusted equity unless the corresponding debt associated with the CIP is also included. The commenter argued that if the corresponding debt is not included, this could create a significant issue if the construction loan is deemed to be a short-term line of credit. While the construction loan is specifically for the building project, the commenter believed that a short-term line of credit would be excluded as debt in the primary reserve ratio since it is not considered to be long-term, and only when the construction loan is termed-out as permanent long-term financing upon the project's completion would the debt be included in the primary reserve ratio. The commenter argued that this disconnect could cause a composite score issue for an institution that has a significant multi-year building project. In addition, the commenter stated the CIP is not placed in-service until the project is completed and, therefore, not usable by the institution.

For these reasons, the commenter recommended that the composite score continue to exclude construction-in-progress assets until they are completed and placed in service as PP&E.

Discussion: To the extent that an institution is using short-term financing for CIP and clearly shows in the notes to the financial statements the amount of short-term financing that is directly related to CIP, it would be appropriate to include that amount as debt obtained for long-term purposes because the Department considers construction projects to serve a long-term purpose for the institution. The Department agrees that CIP has not been placed in service. However, CIP is not an expendable asset and most closely resembles PP&E; therefore, the Department is including it and its associated debt in the primary reserve ratio.

Changes: We are revising the Appendices to reflect that short-term financing for CIP will be considered debt obtained for long-term purposes up to the value of CIP and only to the extent that the short-term financing is directly related to the CIP.

Appendix A and B, Net Pension Liability

Comments: One commenter noted that the primary reserve ratio treats the net pension liability as short-term, which reduces the net assets available for short-term obligations. As a result, the commenter argues that her specific institution cannot achieve a composite score higher than a 1.4, which over time triggers the requirement that the institution provide a letter of credit to the Department. The commenter urged the Department to eliminate the net pension liability from the calculation of the primary reserve ratio and treat it instead as a long-term liability.

Discussion: The commenter is mistaken—the Department has never made a distinction between short-term and long-term pension liabilities.

Changes: None.

Appendix A and B, Supplemental Schedule and Financial Statement Disclosures

Comments: Some commenters believed that to satisfy the reporting

requirements in these regulations and avoid conflicts with GAAP, any additional information the Department seeks about leases, long-term lines of credit, related-party receivables, split-interest gifts, or other items should be provided in the Supplemental Schedule rather than in the notes to the financial statements. The commenters argued that because the Supplemental Schedule identifies all the financial elements needed to calculate the composite score, and those elements are cross-referenced to the financial statements and reviewed by the institution's auditor in relation to the financial statements as a whole, there is no need to alter GAAP. Consequently, the commenters recommend that the Department remove the proposed additional disclosure requirements in the financial statements.

Other commenters believed that including the Supplemental Schedule as part of an institution submission to the Department should eliminate any differences between the composite score calculated by the institution and the score calculated by the Department. To further minimize any differences, the commenters recommended that the Supplemental Schedule include the elements used to calculate the pre-ASU 2016–02 composite score so that the Department has both calculations at the time of the institution's submission.

Discussion: Under section 498(c)(5) of the HEA, the Department must use the audited financial statements of an institution to determine whether it is financially responsible. As the commenters note, the Supplemental Schedule is not part of the audited financial statements but any notes to the financial statements are part of the audited financial statements. Consequently, the Department cannot rely on the information contained in the Supplemental Schedule as the commenters suggest.

In addition, we do not believe that the notes to the financial statements required under these regulations alter GAAP because the Department is not requiring that the information needed to calculate the composite score must be provided in the notes to the financial statements. Rather, it is up to an institution to determine the level of aggregation or disaggregation it uses in preparing its financial statements. Therefore, a note will need to be included only when the required information is not readily identifiable in any other part of the audited financial statements.

We agree with the suggestion that the Department revise the Supplemental Schedule to include the elements needed to calculate the composite score for leases, but note that an institution is not required to include or report to the Department any composite score that it chooses to calculate based on the Supplemental Schedule.

Changes: We are revising the Supplemental Schedules to identify the elements relating to leases that are needed to calculate the composite scores.

Financial Protection—§ 668.175(h)

Comments: Many commenters supported the Department's efforts to expand the types of financial protection that an institution may provide.

One commenter argued that the Department did not comply with applicable law to support the provision in § 668.175(h)(1) that it would publish in the **Federal Register** other acceptable forms of surety or financial protection. The commenter stated that this provision is nothing more than a proposal to make a future proposal on unspecified future action and, thus, should be withdrawn.

Another commenter objected to this provision arguing that it allows the Department to concoct any new kind of financial protection with no standards or requirements in place to ensure that it serves its purpose of paying for liabilities and debts that would otherwise be incurred by taxpayers. The commenter concluded that because the Department failed to demonstrate that there is a specific need for this flexibility and provided no restrictions to ensure that alternatives would be on par with a letter of credit, this provision should be removed.

Discussion: The Department disagrees with the contention that its proposal to publish in the **Federal Register** other acceptable forms of surety or financial protection does not comply with the law. Announcing our intent to accept such form of surety would not change the substance of these final regulations, as it would merely provide an additional method by which institutions could comply with the rule. In addition, the Department would not concoct a form of financial protection that offers no financial protection. As discussed in the NPRM (83 FR 37263) and the 2016 final regulations (81 FR 76008), we understand that obtaining irrevocable letters of credit can be costly, but are not aware of other surety instruments that that would provide the Department with same the level of financial protection or ready access to funds. However, if surety instruments become available that are more affordable to institutions but offer the same benefits to the Department, we wish to retain the flexibility to consider accepting those instruments in the future.

Changes: None.

Comments: None.

Discussion: In the 2016 final regulations, we revised 668.175 to provide that an institution that fails to meet the financial responsibility standards as a result of the new triggering events in § 668.171(c)–(g), as opposed to just as a result of § 668.171(b), may begin or continue to participate in the title IV, HEA programs through the alternate standards set forth in § 668.175. The 2016 final regulations also established under § 668.175(h)(2017) that if the institution did not provide a letter of credit within 45 days of the Secretary's request, the Department would offset the amount of the title IV, HEA program funds the institution is eligible to receive in a manner that ensured that, over a nine-month period, the total amount of offset would equal the amount of financial protection the institution was requested to provide. For the regulations proposed in the 2018 NPRM, and in these final regulations, we adopt the same concept, but with technical changes to track the new triggers in § 668.171(c) and (d). We also amend § 668.175(h) to incorporate the possibility of additional types of financial protection in the future, to be identified in a **Federal Register** notice, allow for cash as an alternative form of financial protection, and modify the nine-month set-off period to be six to twelve months. As we explained in the preamble of the 2018 NPRM, these changes were made to provide the Department with flexibility to assess what time period might be appropriate as an off-set period and to accommodate the possibility of future financial instruments or surety products that may satisfy the Department's requests for financial protection.

In addition, we codify current practice in these regulations that the Department may use a letter of credit or other financial protection provided by an institution to cover costs other than title IV, HEA program liabilities. Under current practice, we notify an institution that the Department may use the letter of credit or other protection to pay, or cover costs, for refunds of institutional or non-institutional charges, teach-outs, or fines, penalties, or liabilities arising from the institution's participation in the title IV, HEA programs.

Changes: We are revising § 668.175(h) to provide that under procedures established by the Secretary or as part of an agreement with an institution, the Secretary may use the funds from a letter of credit or other financial protection to satisfy the debts,

liabilities, or reimbursable costs owed to the Secretary that are not otherwise paid directly by the institution including costs associated with teach-outs as allowed by the Department.

Section 668.41(h) and (i), Loan Repayment Rate and Financial Protection Disclosures

Comments: Some commenters believed that establishing early warning triggering events that require an institution to provide disclosures to students and financial protection to the Department, as promulgated in the 2016 final regulations, would offer critical information to students and help protect taxpayers from financial risk.

Some of these commenters argued that removing disclosures to students runs counter to the Department's stated goal of enabling students to make informed decisions on the front-end of college enrollment. For these reasons, the commenters urged the Department to maintain the disclosure requirements in the 2016 final regulations.

Similarly, other commenters believed that providing disclosures to students about institutions that are required to submit letters of credit to the Department, or after consumer testing, disclosures relating to triggering events, is important for alerting current and prospective students as well as the general public about potential financial problems at those institutions.

Some of these commenters stated that rather than presuming that prospective students would not understand letters of credit or the triggering events, as discussed in the preamble to the 2018 NPRM, the Department should leave those presumptions aside and require the disclosures. Other commenters likened the situation where a student does not understand the calculation of the debt to earnings rate but benefits nonetheless from the information that it provides about a program's quality to the letter of credit disclosure providing greater knowledge about the financial condition of the institution.

With regard to the disclosure associated with the loan repayment rate for proprietary institutions, some commenters agreed with the Department's proposal to rescind that disclosure, but other commenters cited research or analysis that they alleged supported maintaining the disclosure. Some of these commenters contend that a recent research paper found that almost 50 percent of the borrowers who attend proprietary institutions default on their loans within five years of entering repayment and that another paper shows that the relatively poor outcomes of students at for-profit institutions remain even after controlling for differences in family income, age, race, academic preparation, and other factors. Other commenters cited research showing that, among for-profit institutions, there were almost no schools with repayment rates above 20 percent. In addition, some commenters noted that in the preamble to the NPRM, the Department argued that repayment rates reflect financial circumstances and not educational quality, but did not cite any research, analysis, or data to support that claim. These commenters believed that repayment rates are a critical measure for safeguarding $130 billion in Federal aid and supported that belief by citing various reports raising concerns over rising default and delinquency rates and linking repayment outcomes to other metrics of educational outcomes. Other commenters argued that the focus on proprietary institutions is justified and cited research from the Brookings Institution, showing that among non-degree certificate students, those in for-profit programs earned less per year than their counterparts at public institutions despite taking out more in loans. Another commenter voiced similar concerns for proprietary institutions in New York, noting particularly that only seven percent of students enroll at those institutions but account for one in four New Yorkers who default on their loans within three years of entering repayment.

Discussion: We note that the loan repayment rate warning and financial protection disclosures were discussed during the Gainful Employment (GE) negotiated rulemaking and associated NPRM along with GE-related disclosures. However, we are including these disclosures in these final regulations because they were part of the 2016 final regulations we are proposing to revise.

In the 2016 final regulations, we explained that we were requiring repayment rate disclosures that relied upon a repayment rate calculation based on the data provided to the Department by institutions through the GE regulations and on the repayment calculation in those regulations. However, on July 1, 2019, the Department published a final rule that rescinds those requirements.[158] As a result, providing the same repayment rate disclosure as required in the 2016 final regulations is no longer feasible and we do not maintain this disclosure in these final regulations.

As a general matter, we consider repayment rates to be an important factor students and their families may consider when choosing an institution and the Department intends to continue to make comparable information about repayment rates, as well as other information, for all institutions publicly available on the Department's College Scorecard website.[159] This information is a useful resource because it includes repayment rate information, not only for proprietary institutions, but also for nonprofit and public institutions of higher education.

We believe that any benefit that a student may derive from knowing the loan repayment rate for a proprietary institution is negated by not knowing the comparable loan repayment rate at a non-profit or public institution, because the student may rely on the limited repayment rate information available and end up enrolling at an institution whose repayment rate is the same or even worse than the proprietary institution.

With respect to the financial protection disclosures, we acknowledge that some prospective students may find this information helpful, but on balance, we believe that the disclosures, if viewed without proper context, could tarnish the reputation of an institution that otherwise satisfies title IV provisions, and thus jeopardize or diminish the credential, or employment or career opportunities, of enrolled students and prior graduates.

Changes: None.

Guaranty Agency (GA) Collection Fees (§§ 682.202(b)(1), 682.405(b)(4)(ii), 682.410(b)(2) and (4))

Comments: Some commenters supported the proposed changes in §§ 682.202(b)(1), 682.405(b)(4)(ii), and 682.410(b)(4), providing that a guaranty agency may not capitalize unpaid interest after a defaulted FFEL Loan has been rehabilitated, and that a lender may not capitalize unpaid interest when purchasing a rehabilitated FFEL Loan.

One commenter proposed that the Department retain in § 682.402(e)(6)(iii) a provision of the 2016 final regulations that deleted a reference to a guaranty agency capitalizing interest.

One commenter strongly opposed the changes to § 682.410(b)(2), asserting that section 484F of the HEA explicitly permits a guarantor to charge a borrower who enters into a rehabilitation agreement reasonable collection costs up to 16 percent. The commenter further asserted that section 484A(b) of the HEA provides that a defaulted borrower must pay reasonable collection costs and that there are no exceptions

[158] 81 FR 31392.

[159] *See: https://collegescorecard.ed.gov/.*

under which the borrower is not required to pay such costs. The commenter argued that the regulatory change raises equal protection concerns because it ties the Rehabilitation Fee to a 60-day interval that does not have any discernable or rational relationship to borrowers, guarantors, default, or anything else related to loan rehabilitation.

The commenter further asserted that the regulation creates due process concerns because it calls for the elimination of a statutorily-conferred right to payment that is often guarantors' only real compensation for fulfilling their fiduciary obligation to the Department and helping borrowers rehabilitate defaulted loans. The commenter expressed concern that the regulatory change could create perverse incentives and harm borrowers, the federal government, and taxpayers by inhibiting creative outreach tactics that have proven successful bringing defaulted borrowers back into repayment. This commenter also drew a distinction between a defaulted borrower entering into an ''acceptable repayment plan'' and a defaulted borrower entering into a Rehabilitation Agreement. This commenter noted that it is a common practice for guarantors to dispense with per-payment collection fees when borrowers enter an acceptable repayment plan within 60 days of receiving a default notice, even though they are required to do so. They reiterate that loan rehabilitation is a unique process that is defined and mandated by the HEA and controlled by detailed regulations.

Discussion: We thank the commenters who are supportive of the proposed revisions of the guaranty agency collection fee regulatory provisions. We will retain the 2016 final regulations, which are currently effective, with respect to §§ 682.202(b)(1), 682.405, and 682.410(b)(4) because the 2016 final regulations effectively accomplish the same policy objective as the proposed amendatory language in the 2018 NPRM.

We agree with the comment about 34 CFR 682.402(e)(6)(iii) and retain the change made in the 2016 final regulations to remove the sentence regarding capitalization of interest.

We disagree with the commenter who raised legal objections to the Department's proposed regulation. The changes in § 682.410(b)(2) are consistent with the regulatory interpretation and position that the Department outlined in Dear Colleague Letter (DCL) GEN–15–14 (July 10, 2015). We withdrew that DCL to allow for public comment on a regulatory change rather than rely solely on our interpretation of existing regulations.

The Department has considered the commenter's objections but believes that the proposed change is consistent with the HEA and the existing regulations. We note that the United States Court of Appeals for the Seventh Circuit accepted the Department's statutory and regulatory interpretation in *Bible* v. *United Student Aid Funds, Inc.*[160]

Section 484A(a) of the HEA provides that defaulted borrowers ''shall be required to pay, in addition to other charges specified in this subchapter . . . reasonable collection costs.'' Section 428F(a) of the HEA requires the guarantor to offer the borrower an opportunity to have a defaulted loan ''rehabilitated,'' and the default status cured, by making nine timely payments over 10 consecutive months, after which the loan may be sold to a FFEL Program lender or assigned to the Department, and the record of default as reported by the guarantor is removed from the borrower's credit history. Under the HEA and the Department's regulations, the installment amounts payable under a rehabilitation agreement must be ''reasonable and affordable based on the borrower's total financial circumstances.''

The regulations direct the guarantor to charge the borrower ''reasonable'' collection costs incurred to collect the loan.[161] Generally, the charges cannot exceed the lesser of the amount the borrower would be charged as calculated under 34 CFR 30.60 or the amount the Department would charge if the Department held the loan. Before the guarantor reports the default to a credit bureau or assesses collection costs against a borrower, the guarantor must provide the borrower written notice that explains the nature of the debt, and the borrower's right to request an independent administrative review of the enforceability or past-due status of the loan and to enter into a repayment agreement for the debt on terms satisfactory to the guarantor.[162]

Thus, the regulations direct the guaranty agency to charge the borrower collection costs, but only after the guaranty agency provides the borrower the opportunity to dispute the debt, to review the objection, and to agree to repay the debt on terms satisfactory to the guarantor. If the borrower agrees within that initial period to repay the debt under terms satisfactory to the guarantor and consistent with the requirements, the borrower cannot be charged collection costs at any time thereafter unless the borrower later fails to honor that agreement.

We also disagree with the commenter's suggestion that the imposition of collection costs is intended to compensate the guaranty agencies and provide them an incentive to offer loan rehabilitation. A guaranty agency is permitted to charge the borrower for the reasonable collection costs it incurs in collecting on loans. It is not reasonable for the guaranty agency to charge collection costs for collection activities it does not need to take because the borrower entered into and met the requirements of a loan rehabilitation agreement. Collection costs are not intended to be a funding source for guaranty agencies or an incentive for them to offer a statutorily required opportunity to borrowers.

Changes: The Department retains the 2016 regulations, which are currently effective, with respect to §§ 682.202(b)(1), 682.405, and 682.410(b)(4) because the 2016 final regulations effectively accomplish the same policy objective as the proposed amendatory language in the 2018 NPRM. The Department will proceed to revise § 682.410(b)(2) as proposed in the 2018 NPRM.

The Department also retains the change made in § 682.402(e)(6)(iii) as a result of the 2016 final regulations.

Comments: A group of commenters stated that the preamble to the 2018 NPRM specified that collection costs are not assessed if the borrower enters into a repayment agreement with the guaranty agency within 60 days from ''receipt'' of the initial notice, while the regulatory language was less specific about when the 60-day time period would commence. These commenters requested a change to the regulatory language to make clear that the 60-day period begins when the guaranty agency ''sends'' the initial notice described in paragraph (b)(6)(ii), since this is the only date that can be determined by the guaranty agency.

Discussion: We agree with the commenters who noted that that it is appropriate that the 60-day period be determined from the date the guaranty agency sends the notice to the borrower, because the guaranty agency cannot reasonably establish when a borrower receives the notice.

Changes: We have modified § 682.410(b)(2)(i) by replacing the word ''following'' with ''after the guaranty agency sends''.

[160] 799 F.3d. 633 (7th Cir. 2015).

[161] 34 CFR 682.410(b)(2).

[162] 34 CFR 682.410(b)(5)(ii).

Subsidized Usage Period and Interest Accrual (§ 685.200)

Comments: A group of commenters wrote in support of the regulations that provide a recalculation of the subsidized usage period and restoration of subsidies when any discharge occurs. They noted that this action assures that harmed borrowers are made more completely whole.

Discussion: We thank the commenters for their support of the proposed revisions to the regulations governing subsidized usage periods and interest accrual. The Department is not rescinding the revisions that the 2016 final regulations made to § 685.200, which concerns the subsidized usage period and interest accrual. Additionally, the borrower defense to repayment provisions in these final regulations expressly state that further relief may include eliminating or recalculating the subsidized usage period that is associated with the loan or loans discharged, pursuant to § 685.200(f)(4)(iii).

Changes: The changes proposed to § 685.200 in the 2018 NPRM were effectuated by the 2016 final regulations, so no additional changes are necessary at this point. The Department revised § 685.206(e)(12)(ii)(B), which describes the relief that a borrower may receive, to expressly reference § 685.200(f)(4)(iii), which addresses the subsidized usage period.

Regulatory Impact Analysis (RIA)

Under Executive Order 12866, the Office of Management and Budget (OMB) determines 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 final regulatory action will have an annual effect on the economy of more than $100 million because changes to borrower defense to repayment and closed school discharge provisions impact transfers among borrowers, institutions, and the Federal Government and changes to paperwork requirements increase costs. Therefore, this final 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 of this final regulatory action and have determined that the benefits justify the costs.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, no regulations exceeding the agency's total incremental cost allowance will be permitted, unless required by law or approved in writing by the Director of OMB. Much of the effect of these final regulations involves reducing transfers between the Federal Government and affected borrowers, but, as described in the Paperwork Reduction Act section, we expect annualized burden reductions of approximately $4.7 million when discounted to 2016 dollars as required by Executive Order 13771. These final regulations are a deregulatory action under Executive Order 13771 and therefore the two-for-one requirements of Executive Order 13771 do not apply.

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 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 these final regulations only on a reasoned determination that their benefits justify their costs.

Consistent with these Executive Orders, we assessed all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Our reasoned bases for rulemaking include the non-quantified benefits of our chosen regulatory approach and the negative effects of not regulating in this manner. The information in this RIA measures the effect of these policy decisions on stakeholders and the Federal government as required by and in accordance with Executive Orders 12866 and 13563.[163] Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Orders 12866 and 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions. State, local, and tribal governments will be able to continue to take actions to protect borrowers at institutions of higher education, and these final regulations do not interfere with other government's actions. As explained in the preamble, actions taken by State Attorneys General

[163] Although the Department may designate certain classes of scientific, financial, and statistical information as influential under its Guidelines, the Department does not designate the information in this Regulatory Impact Analysis as influential and provides this information to comply with Executive Orders 12866 and 13563. U.S. Dep't of Educ., Information Quality Guidelines (Oct. 17, 2005), *available at https://www2.ed.gov/policy/gen/guid/iq/iqg.html.*

may provide evidence for borrowers to use in making claims, but nothing in the regulations requires or limits such investigations or other state government action.

As required by OMB circular A–4, we compare the final regulations to the current regulations, which are the 2016 final regulations. 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 the regulatory alternatives we considered.

As further detailed in the *Net Budget Impacts* section, this final regulatory action is expected to have an annual effect on the economy of approximately $550 million in transfers among borrowers, institutions, and the Federal Government related to defense to repayment and closed school discharges, as well as $1.15 million in costs to comply with paperwork requirements. This economic estimate was produced by comparing the proposed regulation to the current regulation under the President's Budget 2020 baseline (PB2020) budget estimates. The required Accounting Statement is included in the Net Budget Impacts section.

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

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule'', as defined by 5 U.S.C. 804(2).

1. Need for Regulatory Action

These final regulations address a significant increase in burden resulting from the vast increase in borrower defense claims since 2015. These final regulations reduce this burden in a number of ways, as discussed further in the *Costs, Benefits, and Transfers* section of this RIA.

Although the borrower defense to repayment regulations have provided an option for borrower relief since 1995, in 2015, the number of borrower defense to repayment claims increased dramatically when certain institutions filed for bankruptcy. Students enrolled at those campuses and those who had left the institution within 120 days of its closure were eligible for a closed school loan discharge. The Department decided to also provide student loan discharge to additional borrowers who did not qualify for a closed school loan discharge, but could qualify under the defense to repayment regulation (34 CFR 685.206(c)). The Department encouraged impacted borrowers to submit defense to repayment claims, which it agreed to consider for all institutional-related loans. This resulted in a significant increase in claim volume compared to the prior years: 7,152 claims received by September 30, 2015; 82,612 claims received by September 30, 2016, 165,880 applications received by June 30, 2018; 200,630 applications received by September 30, 2018; 218,366 applications by December 31, 2018; 239,937 by March 31, 2019.

This growth significantly expanded the potential cost to the Federal budget.

In addition, provisions in the 2016 final regulations enable the Secretary to initiate defense to repayment claims on behalf of entire classes of borrowers. Initiating the group discharge process is extremely burdensome on the Department and results in inefficiency and delays for individual borrowers. It also has the potential of providing loan forgiveness to borrowers who were not subject to a misrepresentation, did not make a decision based on the misrepresentation, or did not suffer financial harm as a result of their decision. The 2016 final regulations impose onerous administrative burdens on the Department. Indeed, the Department must: Identify the members of the group; determine that there are common facts and claims that apply to borrowers; designate a Department official to present the group's claim in a fact-finding process; provide each member of the group with notice that allows the borrower to opt out of the proceeding; if the school is still open, notify the school of the basis of the group's borrower defense, the initiation of the fact-finding process, and of any procedure by which the school may request records and respond; and bear the burden of proving that the claim is valid.[164] This process is cumbersome and does not provide an efficient approach.

The group discharge process, which we are not including in these final regulations for loans first disbursed on or after July 1, 2020, may otherwise create large and unnecessary liabilities for taxpayer funds. To make a determination as to a borrower defense to repayment claim under these final regulations, it is necessary to have a completed application from each individual borrower, to consider information from both the borrower and the institution, and to examine the facts and circumstances of each borrower's individual situation. Presuming borrowers' reliance on a school's misrepresentation would not properly balance the Department's responsibilities to protect students as well as taxpayer dollars. Schools are still subject to the consequences of their misrepresentations under this standard and, if necessary, the Secretary retains the discretion to establish facts regarding misrepresentation claims put forward by a group of borrowers.

These final regulations also eliminate the pre-dispute arbitration and class action waiver ban in the 2016 final regulations, reflecting the Department's position that arbitration can be a beneficial process for students and recent court decisions holding that such bans violate the Federal Arbitration Act (FAA).[165] Instead, the final regulations favor disclosure and transparency by requiring schools relying upon mandatory pre-dispute arbitration agreements to provide plain language about the meaning of the restriction and the process for accessing arbitration. With the clear disclosures on institutions' admissions information web page, in the admissions section of the institution's catalogue, and discussion in entrance counseling, the Department believes students can make informed decisions about enrolling at institutions that require such pre-dispute mandatory arbitration agreements versus those that do not. The final regulations also eliminate requirements for institutions to submit arbitration documentation to the Department.

The increased number of school closures in recent years has prompted the Department to review regulations related to closed schools and make changes to them. Under the 2016 final regulations, students who are enrolled at institutions that close, as well as those who left the institution no more than 120 days prior to the closure, are entitled to a closed school loan discharge, provided that the student does not transfer credits from the closed school and complete the program at another institution. To allow more borrowers to make better informed decisions regarding whether to continue attending the school while also allowing them to benefit from the intended purpose of the regulations without the need for a determination as to whether exceptional circumstances exist, the Department extends the closed school discharge window for Direct Loan borrowers from 120 days to 180 days

[164] 34 CFR 685.222(g) and (h); U.S. Dep't of Educ., Student Assistance General Provisions, Final Regulations, 81 FR 75926, 75955 (Nov. 1, 2016).

[165] *Epic Systems Corp.* v. *Lewis,* 138 S. Ct. 1612 (2018).

prior to the school's closure. In these final regulations, a borrower would qualify for a closed school discharge as long as the borrower did not transfer to complete their program, or accept the opportunity to complete his or her program through an orderly teach-out at the closing school or through a partnership with another school. Borrowers who choose the option of participating in a teach-out would not qualify for a closed school discharge, unless the closing institution or other institution conducting the teach-out failed to meet the material terms of the closing institution's teach-out plan, such that the borrower was unable to complete the program of study in which the borrower was enrolled. This mirrors the existing regulations that disallow students who transferred credits from the closed school to another school, or who finished the program elsewhere, to qualify for the closed school loan discharge.

These regulations also revise the current regulations providing for automatic closed school loan discharge for eligible Direct Loan borrowers who do not re-enroll in another title IV-eligible institution within three years of their school's closure to apply to schools that closed on or after November 1, 2013, and before July 1, 2020. This is in line with the Department's preference for opt-in requirements rather than opt-out requirements, such as in the case of Trial Enrollment Periods. (*https://ifap.ed.gov/dpcletters/GEN1112.html*).

The automatic closed school discharge provision also increases the cost to the taxpayer, including for borrowers who are not seeking relief, because default provisions typically capture a much larger population than opt-in provisions. For this and the other reasons articulated in the preamble, the final regulations require borrowers to submit an application to receive a closed school loan discharge.

The final regulations also update the Department's regulations regarding false certification loan discharges. Under these final regulations, if a student does not obtain or provide the school with an official high school transcript, but attests in writing under penalty of perjury that he or she has completed a high school degree, the borrower may receive title IV financial aid, but will not then be eligible for a false certification discharge if the borrower had misstated the truth in signing the attestation.

These final regulations also address several provisions related to determining the financial responsibility of institutions and requiring letter of credit or other financial protection in the event that the school's financial health is threatened. The Financial Accounting Standards Board (FASB) recently issued updated accounting standards that change the way that leases are reported in financial statements and thus considered by the Department in determining whether an institution is financially responsible. To align with these new standards and current practice, these regulations update the definition of terms used in 34 CFR part 668, subpart L, appendices A and B, which are used to calculate an institution's composite score. The Department intends to recalibrate the composite score methodology to better align it with FASB standards in a future rulemaking, but in the meantime, these regulations mitigate the impact of changes in the accounting standards and accounting practice by updating the definition of terms and not penalizing institutions for business decisions they made regarding leases or long-term debt.

In addition, the final regulations adjust the financial responsibility requirements to account for certain triggering events that occur between audit cycles. As in the 2016 final rule, instead of relying solely on information contained in an institution's audited financial statements, which are submitted to the Department six to nine months after the end of the institution's fiscal year, we will continue to determine at the time that certain events occur whether those events have a material adverse effect on the institution's financial condition. In cases where the Department determines that an event poses a material adverse risk, this approach will enable us to address that risk quickly by taking the steps necessary to protect the Federal interest.

These final regulations take a similar approach to the 2016 final regulations which are currently in effect, but here we focus on known and quantifiable debts or liabilities. For example, instead of relying on speculative liabilities stemming from pending lawsuits or defense to repayment claims, under these final regulations, only actual liabilities incurred from lawsuits or defense to repayment discharges could trigger surety requirements. As explained in the preamble, we are revising some of the triggering events for which surety may be required if the potential consequences of those events pose a severe and imminent risk to the Federal interest (for example, SEC or stock exchange actions).

We have also revised or reclassified some of the triggering events, such as high cohort default rates, State agency violations, and accrediting agency actions, that could have a material adverse effect on an institution's operations or its ability to continue operating. These final regulations direct the Department to fully consider the circumstances surrounding those events before making a determination that the institution is not financially responsible. In that regard, these final regulations do not contain certain mandatory triggering events that were included in the 2016 final regulations because the cost and burden of seeking surety is significant. In many cases the 2016 final regulations specified speculative events as triggering events such as pending litigation or pending defense to repayment claims, that can in many cases be resolved with no or minimal financial impact on the institution. As discussed in the preamble, these final regulations also do not include as a mandatory triggering event the results of a financial stress test, which was included in the 2016 final regulations without an explanation of what that stress test would be and on what empirical basis it would be developed.

2. Summary of Comments and Changes From the NPRM

Changes from the NPRM generally fall into two categories: borrower defense claims and closed school discharges. Table 1 expands further upon these changes.

TABLE 1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS FROM THE NPRM

Provision	Regulation section	Description of change from NPRM
Defense to repayment	685.206(e)(2)	Establishes a preponderance of the evidence standard with requirements for reasonable reliance and financial harm. Establishes that borrowers may submit an application, regardless of the status of their loans.
Borrower Defense Period of limitation.	685.206(e)(6)	Places a three-year limitation on borrower defense claims relating to loans first disbursed on or after July 1, 2020. For borrowers subject to a pre-dispute arbitration agreement, arbitration suspends the comments of the three-year limitations period from the time arbitration is requested until the final outcome. Exceptions also possible for consideration of new evidence when a final arbitration ruling or a final, contested, non-default judgment on the merits by a State or Federal Court that establishes that the institution made a misrepresentation.
Borrower defenses—Adjudication Process.	685.206(e)(9)(ii) and (10)	Permits the Secretary to consider evidence in her possession provided that the Secretary permits the borrower and the institution to review and respond to this evidence and to submit additional evidence. Establishes that a borrower will have the opportunity to review a school's submission and to respond to issues raised in that submission.
Borrower defense partial relief for approved claims.	685.206(e)(4)	Clarifies that the Secretary shall estimate the financial harm experienced by the borrower.
Defense to Repayment—Role of the School in the Adjudication Process.	685.206(e)(10)	Clarifies what evidence constitutes financial harm.
Process for asserting or requesting a discharge.	682.402, 685.212	Establishes an application process for borrower defense claims, suspension of collection during processing of said claim, adjudication of borrower defense claims, notification requirements post-adjudication. Clarifies that borrower defense standards and Departmental process apply to loans repaid by a Direct Consolidation Loan.
Borrower Defenses—Adjudication Process.	685.206, 685.212	Revises the circumstances when the Secretary may extend the time period when a borrower may assert a defense to repayment or may reopen the borrower's defense to repayment application to consider evidence that was not previously considered. Automatically grants forbearance on the loan for which a borrower defense to repayment has been asserted, if the borrower is not in default on the loan, unless the borrower declines such forbearance.
Closed school discharges	685.214	Changes the eligibility criteria to exclude borrowers who continue their education through a teach-out or by transferring credits, as opposed to those who have been offered a teach-out by a closing school.
Closed school discharges	674.33 and 682.402	No longer making closed school discharge changes to FFEL or Perkins regulations.
Financial Responsibility	668.171, 668.172, 668.175	Revised provision related to withdrawal of owner's equity and the treatment of capital distributions equivalent to wages. Included new discretionary trigger for institutions with high annual dropout rates. Revised treatment of discretionary triggers so that when the institution is subject to two or more discretionary triggering events in the period between composite score calculations, those events become mandatory triggering events unless a triggering event is cured before the subsequent event occurs. Leases entered into on or after December 15, 2018, will be treated as required under ASU 2016–02 while those entered before then will be grandfathered. Please see Table 2 for further description of financial responsibility triggers.

Additionally, after further consideration, we are keeping many of the regulatory changes that were included in the 2016 final regulations. Some of the revisions the Department proposed in the 2018 NPRM were essentially the same as or similar to the revisions made in the 2016 final regulations, which are currently in effect. The Department is not rescinding or further amending the following regulations in title 34 of the Code of Federal Regulations, even to the extent we proposed changes to those regulations in the 2018 NPRM: §§ 668.94, 682.202(b)—guaranty agency collection fees, §§ 682.211(i)(7), 682.405(b)(4)(ii), 682.410(b)(4) and (b)(6)(viii), and 685.200—subsidized usage period and interest accrual.

Comments: Some commenters assert that the proposed regulations would limit the circumstances in which a borrower may seek loan cancellation based on school misconduct to ''defensive,'' post-default administrative collection proceedings, and that this is demonstrated by its incorporation into the Department's analysis. The NPRM identifies the 2016 final regulations as the baseline for the impact analysis in its three options. The commenters argue that the option of using the 1995 regulations as a more lenient option is invalid because it is the same as the baseline with respect to the Department's acceptance of affirmative claims. Likewise, the Department's option of limiting consideration of borrower defenses to repayment to post-default collection proceedings would be a change not only from the 2016 final regulations, but from the pre-2016 practice as well. As a result, the commenter claims it represents a new scenario. The commenters assert that these inaccuracies undermine the compliance of this NPRM with Executive Orders 12866 and 13563.

Another commenter asserted that using the 2016 final regulations as a baseline for the impact analysis is problematic because the Department's conclusion that borrowers will benefit from increased transparency with respect to the required disclosures is contingent upon a regulatory environment in which pre-dispute arbitration agreements and class action waivers are permitted, but not subject to

robust disclosures. Additionally, this commenter notes that the Department is not ''assuming a budgetary impact resulting from prepayments attributable to the possible availability of funds from judgments or settlement of claims related to Federal student loans.'' [166] This commenter contends this assumption does not support the Department's assertion that borrower may recover more from schools in arbitration than through a lawsuit.

Discussion: We thank the commenters for their submissions on the types of claims the Department should accept. Upon further consideration, the Department changed its position on the posture (*i.e.,* defensive and affirmative) from which borrowers may submit borrower defense to repayment applications. Affirmative claims are permitted in these final regulations, and that is reflected in the Regulatory Impact Analysis. These regulations include a three-year limitations period for both affirmative and defensive claims. These regulations also promulgate a different Federal standard than the 2016 final regulations. The limitations period and Federal standard in these regulations limit the circumstances in which a borrower's loan may be cancelled with respect to a defensive claim during a post-default administrative collection proceeding.

We disagree with commenters who state that we used the wrong baseline or were inconsistent in our application of the baseline. The Regulatory Impact Analysis, per OMB Circular A–4, is required to compare to the world without the proposed regulations, which would be the 2016 final regulations. This baseline is clearly stated in the *Regulatory Alternatives Considered* section and in various sections throughout the analysis. Further, the Department computed various impact scenarios and discussed other regulatory options that were considered. With respect to the discussion of pre-dispute arbitration agreements in the *Costs, Benefits and Transfers* section of this RIA, the Department does describe the change compared to the 2016 final regulations but also points out the benefits of the required disclosures. Accordingly, the Department believes it is in compliance with Executive Orders 12866 and 13563.

Changes: None.

Comments: A commenter stated that methods by which the Department estimates lifetime default rates under Alternative A overestimate the share of borrowers who could raise a defensive claim under this rule, even if strategic defaults would occur. The commenter also noted that borrowers with defensive claims would only be able to file a claim during the timeframe governing a collections action and only after that action has been initiated—but those actions are not universally applied, nor are those timeframes well understood by borrowers. Further, the Department received numerous comments recommending that defense to repayment be made available to all borrowers, including those in regular repayment status, default and collections. According to these commenters, in all cases of collection proceedings, administrative hurdles such as filing claims within the timeframe for filing an affirmative defense will disproportionately affect borrowers with valid claims, as those borrowers are unlikely to be notified of their rights under the proposed rules, causing them financial harm. In order to avoid this, commenters suggested that the Department should examine data on the initiation of collection processes to determine for how many borrowers per year it initiates debt collection proceedings like those described in Alternative A; reduce the share of defensive claims to parallel the share the defaulters per year placed in those proceedings with an opportunity to challenge its initiation; and consider whether a small inflation is appropriate to account for borrowers who default strictly to file a claim. In the final regulations, commenters suggested that the Department should detail the revision it makes to these numbers and publish those data to better inform stakeholders of the underlying information informing the budget estimates.

Discussion: The Department appreciates the commenter's concern that the defensive claims percentage overstates the share of borrowers who would be able to file a claim. The suggestions about analysis based on the share of defaulters in collections proceedings who present a defense are appreciated, but the Department did not have that data available and the changes to the final regulations make that analysis less relevant to the final regulations we adopt here. The final regulations do allow those in all repayment statuses to apply for a borrower defense discharge. If we did reduce the defensive claims percentage as the commenter suggests, we know the transfers from the Federal government to affected borrowers would be reduced, as shown in the sensitivity analyses presented in the 2018 NPRM and in these final regulations. As discussed in the *Net Budget Impact* section, the defensive claims percentage has been replaced by the Allowable Claims percentage based on the number of claims filed within the three-year timeframe applicable under these final regulations.

As detailed in the preamble section on *Affirmative and Defensive Claims,* the Department agreed with commenters that it is appropriate to accept both affirmative and defensive claims and this approach balances concerns about incentivizing strategic defaults, effects on borrowers, and administrative burden on the Department.

As described in the *Borrower Defenses—Limitations Period for Filing a Borrower Defense Claim* section of the preamble, the Department has determined that a three-year limitations period for both affirmative and defensive claims is appropriate. In order to mitigate the risk that borrowers with a valid claim will not be notified of their rights in time to file a borrower defense to repayment application, the final regulations provide that the Secretary may extend the time period for filing a borrower defense to repayment if there is a final, non-default judgment on the merits by a State or Federal court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation as defined in § 685.206(e)(3). The Secretary also may extend the limitations period for a final decision by a duly appointed arbitrator or arbitration panel that establishes the institution made a misrepresentation as defined in § 685.206(e)(3).

Changes: The Department revised § 685.206(e)(7) to provide for the circumstances in which the Secretary may extend the limitations period to file a borrower defense to repayment application.

Comments: One commenter cites Executive Order 12291 which requires both that agencies describe potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, identify those likely to receive the benefits, and ensure that the potential benefits to society for the regulation outweigh the potential costs to society. In order to accomplish this, the commenter asserted the Department should add several components to the regulatory impact analysis of these final regulations, including: Quantifying the total share of loan volume and the total share of borrowers affected by institutional misconduct that meets the standard it expects will receive relief on their loans; detailing the average share of relief it expects borrowers in each

[166] 83 FR 37299.

sector to receive; and conducting a quantitative analysis that directly compares the benefits under this rule against the costs (particularly to borrowers), to create a true cost-benefit analysis. The commenters said that the RIA also needs to address the non-monetary component of the benefit-cost analysis, and one component of this analysis should be the fairness of the rule to borrowers. For example, the Department indicates that some borrowers who should be eligible for claims based on the misconduct of their institutions will be unable to have their loans discharged due to the way the Department has designed the process.

Discussion: First, we note that Executive Order 12291 was revoked by Executive Order 12866 on September 30, 1993, though E.O. 12866 contains similar provisions as 12291 for these purposes. The monetized estimates in the Regulatory Impact Analysis are based on the budget estimates, which can be found in the *Net Budget Impacts* section. The assumptions described there are based on a percent of loan volume and, like the 2016 final regulations, do not specify a number or percent of borrowers affected as the share of loan volume affected could be reached under a range of scenarios and involve many borrowers with relatively small balances or a mix of borrowers with higher balances. Other impacts, including expected burdens and benefits are discussed in the *Costs, Benefits, and Transfers* and *Paperwork Reduction Act of 1995* sections. The Department believes its NPRM and these final regulations are in compliance with Executive Order 12866.

The Department addresses the cost-benefit analysis of these regulations extensively in the preamble. The Department explains why the Federal standard in these final regulations is more appropriate than the Federal standard in the 2016 final regulations and also how the adjudication process provides more robust due process protections for both borrowers and schools. These final regulations provide a fair process for borrowers while also protecting a Federal asset and safeguarding the interests of the Federal taxpayers.

Changes: None.

Comments: Some commenters argued that an estimated tax burden between $2 billion and $40+ billion over ten years is of such a large range that it indicates the Department is unsure of the tax burden that these regulations will have. In fact, some commenters suggested that the Department withdraw the NPRM and resubmit it with an accurately stated baseline and budget impact scenarios, and allow the public additional time to comment on the proposed regulation.

Discussion: We disagree with the commenters who state that the regulations would result in between $2 and $40 billion increased burden on taxpayers. The range presented by the commenter refers to the 2016 NPRM,[167] and that range was narrowed for the 2016 final regulations. The Department has always acknowledged uncertainty in its borrower defense estimates, as reflected in the additional scenarios presented in the *Net Budget Impacts* section of this RIA. Further, the *Accounting Statement* contained in the NPRM shows a savings to taxpayer funds of $619.2 million annually. The final regulations revise this estimate to $549.7 million.

Changes: None.

Comments: One commenter noted that the Department should clarify the assumptions in each component of the net budget impact, *i.e.,* determine the degree to which the Department accounted for data on collections proceedings within the default rates it examined for the defensive applications percent to account for the share of defaulted borrowers who experienced a given collection proceeding in a year and the narrow timeframe (30–65 days) in which borrowers will have to file a defense to repayment claim. Also, commenters asked that the Department clarify how the RIA accounts for the elimination of a group process; how it evaluates the evidence requirements associated with demonstrating how a misrepresentation meets the standard of having been made with reckless disregard or intent; and how it accounts for recoveries of discharged funds through a proceeding with the institution as opposed to the financial protection triggers. To do this, commenters suggested that the Department could conduct additional sensitivity analyses to show how each aspect of the proposed rule interacts with the remainder of the rule, and the implications estimates. Current sensitivity analyses do not test all of these items; and neither the sensitivity analyses nor the alternative scenarios account for how a group process would alter the benefits to borrowers under this rule. The commenters also stated that the Department should clarify that the net budget impact, not the annualized figures presented in the classification of expenditures, is the primary budget estimate and clarify the total impact it expects this rule to have on borrowers.

Discussion: The Department thanks the commenters for identifying an area of the analysis that may have been unclear. The Department has clarified the impacts of eliminating the borrower defense to repayment group discharge process in the *Costs, Benefits, and Transfers* and *Regulatory Alternatives Considered* sections. The Department also notes that the Federal standard and the definition of misrepresentation no longer require intent, as discussed in the ''Federal Standard'' and ''Misrepresentation'' sections of the Preamble. Requests for additional sensitivity analysis and clarifications about the budget assumptions are addressed within the Net Budget Impacts section of this RIA.

Changes: Additional discussion and sensitivity runs regarding borrower defense estimates were added to the Net Budget Impacts section.

Comments: One commenter stated that because the two large institutions that closed used forced arbitration, the Department does not have the data on offsetting funds so it cannot account for the reduced likelihood that injured students will recover any damages when their only option for bringing a claim is in arbitration. The Department's statements about students' likely recovery also do not show that those few students who do prevail in arbitration are more likely to obtain greater awards. At a minimum, the commenters asserted that the Department must contend with available evidence regarding these students' experiences in arbitration, which show that arbitration does not provide meaningful relief. They also said that the Department should justify the assertion that lawsuits are any less likely to have merit than arbitration demands.

Discussion: This commenter erroneously assumed that allowing institutions to use pre-dispute arbitration agreements prevents borrowers from accessing the Department's borrower defense to repayment process. A borrower's only option is not arbitration if a borrower signs a pre-dispute arbitration agreement. Under these final regulations, even if a borrower signs an agreement for pre-dispute arbitration, the borrower has access to the Department's borrower defense to repayment process. The borrower may file a borrower defense to repayment application before the arbitration begins, during the arbitration, or after the arbitration as long as the borrower

[167] 81 FR 39394. Net Budget Impact section of NPRM published June 16, 2016 presented a number of scenarios with a range of impacts between $1.997 to $42.698 billion.

otherwise meets the requirements for submitting a borrower defense to repayment application under these final regulations. Additionally, these final regulations suspend the commencement of the limitations period for submitting a borrower defense to repayment application for the time period beginning on the date that a written request for arbitration is filed and concluding on the date the arbitrator submits, in writing, a final decision, final award, or other final determination to the parties.

The Department disagrees that what occurred at certain institutions should determine the Department's policy regarding pre-dispute arbitration agreements. What occurred at one or two schools does not bind the Department's policy determinations and is not indicative of what occurs at schools throughout the country.

The Department has not asserted that lawsuits are less likely to have merit than arbitration demands or that borrowers who do prevail in arbitration will, in all cases, receive greater awards. The Department has asserted that arbitration may be more accessible to borrowers since it does not require legal counsel and can be carried out more quickly than a legal process that may drag on for years.[168] Even if arbitration does not provide meaningful relief, borrowers may still submit a borrower defense to repayment application and obtain additional relief.

The Department has clarified the impacts of mandatory, pre-dispute arbitration relative to borrower defense to repayment in the *Costs, Benefits, and Transfers* section. Specifically, the Department's analysis now centers around the strong public policy preference in favor of arbitration as set forth in statute and in Supreme Court jurisprudence. As explained at length in the Preamble, arbitration provides significant advantages over traditional litigation in court, including: Party control over the process; typically lower cost and shorter resolution time; flexible process; confidentiality and privacy controls; awards that are fair, final, and enforceable; qualified arbitrators with specialized knowledge and experience; and broad user satisfaction. Requests for clarification about what is accounted for in the budget estimates are addressed in the *Net Budget Impact* section of this RIA.

Changes: None.

Comments: One commenter expressed concerns that inconsistent standards were used throughout the NPRM with regard to comparison with the pre-2016 regulations and 2016 final regulations. The commenter asserted that this inconsistency of positions, inconsistent use of existing data, and inconsistent reliance on different regulations are indicative of arbitrary decision making. They also asserted that the Department did not provide a strong rationale for the assertion that the small number of claims data from prior to 2015 are acceptable to guide policy, yet the more recent experience with larger numbers of claims is not, specifically in terms breach of contract. Furthermore, the commenter stated that the Department provided no empirical evidence that an easy claims process may result in borrowers filing claims due to dissatisfaction as opposed to misrepresentation, but dismisses data as useful evidence to guide decision making.

This commenter asserts that the Department has not conducted any data analysis on existing claims to indicate the share of claims that were defensive or affirmative. This commenter also requests that the Department address concerns raised by the Project on Predatory Student Lending,[169] demonstrating that the Department has accepted affirmative claims since at least 2000. Additionally, this commenter asserts that the Department has not provided a reasoned explanation for the elimination of a group claims process. The commenter contends that the Department provides no evidence for or analysis of the claim that the group discharge process may create large and unnecessary liabilities for taxpayer funds.

Discussion: We disagree with the commenters who state that the standards we applied in the Regulatory Impact Analysis were inconsistent. The Regulatory Impact Analysis, per OMB Circular A–4, requires the agency compare impacts of the proposed regulation to the world without the proposed regulations, which in this case would have been the 2016 final regulations. This baseline is clearly stated in the *Alternatives Considered* section and in various sections throughout the analysis. Further, the Department analyzed data from its Borrower Defense database and made them available during the negotiating sessions.[170] Although 22 percent of claims had been completed as of November 2017 (29,780/135,050), they were not a representative sample of the universe of all claims. The data in 2017 was skewed because so many of the claims were from a very small number of institutions. This remains the case today. For that reason, the Department's data were insufficient for use in decision-making relative to claim outcomes.

Additionally, it is reasonable to conclude that borrowers are more likely to submit a borrower defense to repayment claim if the standard governing these claims is lower. The commenter acknowledges that there have been a larger number of borrower defense to repayment applications. The great volume of borrower defense to repayment applications submitted under the 2016 final regulations, which provides a more lenient standard than these final regulations, may indicate that borrowers are more likely to submit a borrower defense to repayment claim if the standard governing these claims is lower. While the Department has not yet processed all of the filed claims, of the total number of applications reviewed so far, over 9,000 applications have been denied, for reasons that include: Borrowers who attended the institution, but not during the time period of the institution's misrepresentation; claims submitted without evidence; and claims that were made without any basis for relief.

The Department agrees with commenters regarding the affirmative claims received prior to 2015. We intend to update the Borrower Defense Database to include older records not received through an application.

The Department acknowledges that it accepted affirmative claims in the past. An analysis on the number of claims that were affirmative or defensive or of the correlation between an affirmative claim and a finding against the borrower is not necessary as the Department will continue to allow both affirmative and defensive claims to be filed. As discussed earlier in the preamble to these final regulations, the Department is adopting the approach in both instances of Alternative B from its proposed regulatory text for loans first disbursed on or after July 1, 2020, which will allow for both affirmative and defensive claims, and those changes are reflected in the Regulatory Impact Analysis.

The Department's reasoned explanation for eliminating the group claims process is in the relevant sections of the preamble.

Changes: Changes regarding the Department's decision to accept both affirmative and defensive claims are reflected in the assumptions used for

[168] 83 FR 37265.

[169] *https://predatorystudentlending.org/press-releases/department-educations-borrower-defense-includes-fundamental-lie-documents-show-press-release/.*

[170] *www2.ed.gov/policy/highered/reg/hearulemaking/2017/borrowerdefensedataanalysis11118.docx.*

the *Net Budget Impact* section of this analysis.

Comments: Some commenters expressed concern that the proposed regulations would lead to costly and frivolous lawsuits at the expense of taxpayers, while doing little to help students by comparison. Another commenter stated that the NPRM provided no evidence of students who, under current borrower defense rules, asserted a defense to repayment simply because they regretted their educational choices. One the other hand, another commenter felt that the proposed regulations would save taxpayers several billions of dollars from false claims over the next decade, while also providing necessary accountability in the system to prevent fraud.

Discussion: The Department appreciates the support of the commenter who asserts that these final regulations will result in a significant savings to Federal taxpayers.

The Department's decision to accept both affirmative and defensive borrower defense to repayment applications may reduce lawsuits between borrowers and institutions. More borrowers will be able to file defense to repayment applications than if the Department accepted only defensive claims. The school has an opportunity to respond to the borrower's allegations, and the borrower also has an opportunity to address the issues and evidence raised in the school's response. The Department's borrower defense to repayment process is more accessible and less costly than litigation for a borrower who seeks relief. Through the Department's process, the borrower will receive any evidence the school may have against the borrower's allegations and will be better able to assess whether to pursue litigation if they are unsatisfied with the result of their borrower defense to repayment claim. The Department has clarified the impacts of lawsuits relative to borrower defense to repayment and also its assumptions regarding borrower motivation in the *Costs, Benefits, and Transfers* section.

Additionally, in the 2018 NPRM, the Department did not assert that borrowers are seeking a defense to repayment because they regret their educational choices. The Department stated: ''The Department has an obligation to enforce the Master Promissory Note, which makes clear the students are not relieved of their repayment obligations if they later regret the choices they made.'' [171] The Department does not weigh the motives of students who file a borrower defense to repayment application. The Department is implementing regulations that will more rigorously enforce the terms and conditions in the Master Promissory Note.

Changes: As noted in the *Net Budget Impacts* section, we have revised the assumptions to include affirmative as well as defensive claims.

Comments: One commenter expressed concern that the proposed regulations would narrow the standards under which claims would be adjudicated. The reduction of claims that result would not be the result of changes in institutional behavior due to disincentives to misbehave, but rather from process changes imposed on borrowers. Commenters also suggested that defensive claims would provide greater advantages to students in a collections proceeding than a student who has continued to pay her loan since the student in repayment would not be able to seek relief through defense to repayment.

Discussion: Based upon the Department's revised position relative to which borrowers may submit borrower defense to repayment applications, the period of limitation, and the revised evidentiary standard, we increased our estimate of the percent of loan volume subject to a potential claim as compared to the NPRM, as reflected in the Allowable Claims percentage in Table 3 compared to the Defensive Claims percentage in Table 5 of the NPRM. We do still expect that the annual number will be less than that anticipated under the 2016 final regulations. The Department believes its final regulations protect borrowers, whether in default or not, from institutional misrepresentation while holding institutions accountable for their actions.

The Department discusses why its Federal standard and adjudication process are appropriate and will sufficiently address institutional misconduct in the preamble and more specifically in the *Federal Standard* and *Adjudication Process* sections of the Preamble.

We agree with the commenter that borrowers who are in default and are filing defensive claims should not have greater advantages than borrowers who have been paying off their loans and who are making affirmative claims. Accordingly, these final regulations provide the same limitations period of three years for both affirmative and defensive claims in § 685.206(e)(6).

Changes: As discussed above, we made revisions to the Allowable Claims percentage in Table 3, as compared to the Defensive Claims percentage in Table 5 of the NPRM. Additionally, the Department revised § 685.206(e)(6) to provide a three-year limitations period for both affirmative and defensive claims.

Comments: Another commenter noted that the Department needs to account for the costs to students and justify how the regulations will improve conduct of schools by holding individual institutions accountable and thereby deterring misconduct by other schools. Another commenter stated that the Department does not indicate what economic analysis justifies placing on students the burden of showing schools' intentional deception. Another commenter mentioned that the Department's estimates in the net budget impact do not contain the potential for significant institutional liabilities, as the proposed regulations have fewer financial protection triggers, resulting in lower levels of recovery. Accordingly, the Department's assumption that these proposed regulations will have the same deterrent effect is impractical and unreasonable.

Through other departmental actions unrelated to this rule, the commenter stated it is likely that the frequency of unlawful conduct will actually increase.

An additional commenter stated that assumptions underlying this forecast that students could be left with ''narrowed educational options as a result of unwarranted school closures'' appear without basis in fact or reason. The commenter asserts that not only would putting primary responsibility for purveying accurate information on schools be no more of a burden than is normally expected of any honest commercial enterprise, but it would improve overall free market competition by enabling honest schools to flourish in a reliably transparent marketplace at the expense of the dishonest ones. Commenters asserted that the Department needs to show why it would be too burdensome on schools' potential productivity to require them to take the precautions needed to assure their provision of accurate information to prospective students and why students should be expected to be efficient and effective evaluators of the accuracy of schools' promotional efforts.

Discussion: We disagree with commenters who state that we did not account for costs to borrowers. These are covered in the *Costs, Benefits, and Transfers, Net Budget Impacts,* and *Paperwork Reduction Act of 1995* sections. Further, in response to comments, the final regulations revise our proposed borrower defense to repayment standard, which now

[171] 83 FR 37243.

requires an application and a preponderance of the evidence showing the borrower relied upon the misrepresentation of the school and that the reliance resulted in financial harm to the borrower. The standard in these final regulations does not require students to prove schools' intent to deceive. We agree with commenters that all institutions should bear the burden of their misrepresentations, which is why the Department intends to recoup its losses from institutions due to borrower defense discharges. Despite the commenter's concern, the financial triggers we have included in the final regulations are better calibrated to link the triggering events to a precise and accurate picture of an institution's financial health. The pattern and maximum rate of recoveries is reduced from the PB2020 baseline, but the recovery rate remains significant and will reduce help offset borrower defense discharges.

The comments about the specific budget assumptions and the potential deterrent effect of the regulations are addressed in the Net Budget Impacts section of this RIA.

Other Departmental actions unrelated to this rule are not at issue in promulgating these final regulations. The commenter is welcome to submit comments in response to other proposed regulations if the commenter believes that the Department's other actions will somehow increase unlawful conduct. While it is true that the Department's regulations may have interactive effects, the Department does not agree that the proposed changes to the accreditation regulations described in the NPRM published June 12, 2019, will lead to a substantial increase in conduct that could generate borrower defense claims. Even if an influx of bad actors were to occur and go unchecked as suggested by the commenter, we believe the range of outcomes described in the Net Budget Impact sensitivity runs capture the potential effects.

The Department agrees with commenters that institutions should be held accountable for making a misrepresentation, as defined in these final regulations. The Department does not believe that it is too burdensome for institutions to provide accurate information to their students. Borrowers have choices in the education marketplace, and these final regulations seek to eliminate, prevent, and address unlawful conduct. The Department explains why its Federal standard, the definition of misrepresentation, and the adjudication process adequately address unlawful conduct in the applicable sections of the preamble.

Changes: None.

Comments: One commenter mentioned that lifting the ban on pre-dispute arbitration clauses, class action waivers, and internal dispute processes and deleting provisions that would require reporting on the number of arbitrations and judicial proceedings, award sizes, and status of students would allow institutions to limit the flow of information regarding abuses, misrepresentations, and fraudulent activity. The resulting delay of information would add costs to the taxpayer and burden to borrowers. In fact, another commenter opines that the Department does not state key costs and overstates relative benefits of rescinding the 2016 provisions restricting funds to schools that use forced arbitration and class-action waivers and replacing them with an ''information-only'' approach. Although the NPRM claims that borrowers will benefit due to transparency, the data would be helpful to law enforcement and future student loan borrowers.

Another commenter contends that the Department has no support for the assertion that permitting forced arbitration will reduce the cost impact of unjustified lawsuits. This commenter also contends that the Department does not acknowledge one of the benefits of the 2016 final regulations in deterring misconduct of schools and recommends that the Department assess the reduction in deterrence as a cost.

Discussion: The Department supports the use of internal dispute resolution processes as a way for disputes to be resolved expeditiously, which was not prohibited by the 2016 final regulations. An internal dispute resolution process is often a vehicle for a borrower to receive relief directly from an institution, in a cost-effective and timely manner. The use of an internal dispute resolution process can be a vehicle for potential resolution, without placing the burden on the Department to adjudicate.

The Department also reminds the commenters that borrowers who have entered into a pre-dispute arbitration agreement or endorsed a class action waiver may still avail themselves of the borrower defense to repayment process offered in these final regulations. Indeed, the Department will toll the limitations period for filing a borrower defense to repayment application until the final arbitration award is entered. As previously stated, the borrower, however, may file a borrower defense to repayment application before the arbitration proceeding, during the proceeding, or after the proceeding. The Department does not wish to create a burden in requiring institutions to report the number of arbitrations and judicial proceedings, award sizes, and various other matters. As detailed in the Paperwork Reduction Act discussion of *Section 685.300, these changes are estimated to reduce burden by* 179,362 hours and $6.56 million annually.

Additionally, the final regulations on financial responsibility standards do require institutions to report the occurrence of risk events that may have a material impact on their financial stability or ability to operate.

The Department does not assert that arbitration will reduce the cost impact of unjustified lawsuits only but instead that arbitration generally eases burdens on the overtaxed U.S. court system.[172] The section on ''Pre-Dispute Arbitration Agreements, Class Action Waivers and Internal Dispute Processes'' in the preamble provides a more fulsome justification for the Department's policy determinations.

Finally, the Department believes that these final regulations also deter unlawful conduct by an institution, and the commenter does not provide any evidence to support the assumption that these final regulations will not do so. Accordingly, the Department will not assess the reduction in deterrence as a cost. However, in response to the commenter's points about reduced deterrence, the Department added a sensitivity scenario assuming no deterrent effect on institutional conduct in the *Net Budget Impacts* section of this RIA.

Changes: As mentioned above, we added a sensitivity scenario assuming no deterrent effect on institutional conduct in the *Net Budget Impacts* section of this RIA.

Comments: One commenter noted that the Department's analysis of benefits to borrowers makes unsupported assertions regarding the advantages of arbitration relative to litigation in court. The commenter said that available evidence in the higher education context does not support the Department's predictions. Another commenter stated that the NPRM provides no explanation for decreasing the estimate of students at proprietary schools that would be impacted by arbitration clauses from 66 percent to 50 percent. The impact of both in costs to students and to the number of students directly affected needs to be reevaluated.

Discussion: We thank the commenters who provided counter-analysis on mandatory arbitration clauses. We disagree with commenters who state the budget estimate is poorly explained; a

[172] 83 FR 37265.

specific estimate for students affected by the provision identified by the commenter is not included in either the 2016 budget estimate or the NPRM budget estimate. We believe the commenter is referring to the Paperwork Reduction Act burden calculation that in the 2016 final rule that assumed 66 percent of students would receive the notices required in § 685.300(e) or (f).[173] No specific basis was described for the 66 percent. In the NPRM published July 31, 2018, the Department used the percent of students who use the Department's online entrance counseling as a basis for its assumption that 50 percent of students would be affected by pre-dispute arbitration agreements.[174] Additional detail about the burden calculation is provided in the Paperwork Reduction Act discussion related to arbitration disclosures.

The Department's reasons for allowing borrowers and schools to enter into a pre-dispute arbitration agreement and class action waivers, and the benefits of this policy are explained more fully in the ''Pre-dispute Arbitration Agreements, Class Action Waivers and Internal Dispute Processes'' section in the Preamble.

Changes: No change necessary.

Comment: One commenter noted that the Department's definition of small businesses under the Regulatory Flexibility Act does not make sufficient use of Department data, defines a small institution in an arbitrary manner, and that this definition is not in line with the definition used by the Small Business Administration. The commenter asserted that the Department should rely on the IPEDS finance survey to identify institutions with less than $7 million in annual revenue. The commenter stated that the Department should consider the typical size of nonprofit institutions in evaluating whether they qualify as dominant in their fields by calculating the median for four-year and less-than-four-year nonprofits. They also said that this definition would be more responsive going forward, by reflecting potential changes in the education marketplace through adjustments to the median in future calculations. For public institutions, the commenter said the Department should explain why it chose to measure them based on student enrollment, when the proposed regulations noted that public institutions are usually determined to be small organizations based on the population size overseen by their operating government. If a justification cannot be made for Department's determinations, the commenter said it should revert to the definition it has historically used until it can work with institutions of higher education to find a more accurate threshold.

Discussion: We disagree with the commenter who stated that the Department's reasons for proposing a definition of small institutions are unclear. While the Department did use the IPEDS finance survey to identify proprietary institutions that were considered small for previous regulations including the 2016 final regulations, we believe the enrollment-based definition provides a better standard that can be applied consistently across types of institutions. As we stated in the NPRM, the Department does not have data to apply the Small Business Administration's definition for institutions; specifically, we do not have data to identify which private nonprofit institutions are dominant in their field nor do we have data on the governing body for public institutions. We disagree with commenters who suggest that a ''typical'' size of nonprofit institutions should be used to determine whether the institution is dominant in its field. Further, we disagree with the commenter's suggestion to use median (50th percentile) enrollment as the threshold for identifying small institutions; no evidence presented by the commenter suggests that the bottom 50 percent of institutions are small. In fact, selecting a percentile threshold without an analytical basis for selection of that threshold would be an unsupported conclusion.

We disagree with the commenter who stated that the definition of small institutions proposed by the Department was arbitrary and capricious. As stated in the NPRM, the definition was based upon IPEDS data from 2016, and we used statistical clustering techniques to identify the smallest enrollment groups. Specifically, coverage of and correlations between revenue, title IV volume, FTE enrollment, and number of students enrolled were evaluated for all institutions that responded to the 2016 IPEDS survey. Because this definition should work for all institutions, and not just title IV participating institutions, title IV funds were rejected as a variable to measure size. Further, research found that revenue had poor coverage and was not well correlated with enrollment in the public and private nonprofit sectors, so it was also rejected as a variable to measure size. Department data do have good coverage, for all institutions, in enrollment data. Therefore, enrollment data were selected as the variable to measure size. Additionally, data were grouped into two-year and four-year institutions based on visual differences in data distribution.

We used a k-means model to identify optimal numbers of clusters by determining local maxima in the pseudo F statistic (SAS Support, Usage Note 22540, available at: *support.sas.com/kb/22/540.html* and SAS Community, Tip: K-means clustering in SAS—comparing PROC FASTCLUS and PROC HPCLUS, available at: *https://communities.sas.com/t5/SAS-Communities-Library/Tip-K-means-clustering-in-SAS-comparing-PROC–FASTCLUS-and-PROC/ta-p/221369*). We then used a centroid method to identify clusters (SAS Institute Inc, 2008, Introduction to Clustering Procedures: SAS/STAT® 9.2 User's Guide, Cary, NC: SAS Institute Inc. available at: *support.sas.com/documentation/cdl/en/statugclustering/61759/PDF/default/statugclustering.pdf*) and confirmed visually. The smallest cluster of four (0–505) was used for the two-year institutions' definition, and the two smallest clusters of six (0–425 and 425–1015) were used for the four-year institutions' definition. The thresholds were rounded to the nearest 100 for simplicity and to allow for annual variation. Further, the results were deemed sufficient by visual inspection for each control (public, private, and proprietary). Finally, the four-year definition further confirms the existing IPEDS definition for a small institution.

Changes: None.

Comments: One commenter stated that given policy changes in the proposed regulations, the Department assumes too high a recovery rate from institutions. This commenter contends that the assumptions should be revisited and the percentage for recovery should be reduced. They also note that the proposed regulations include fewer financial protections than what the Department laid out in the 2016 final regulations, many of which were early-warning indicators. The commenter asserted that the financial triggers included in the proposed regulations are much less predictive of problems and will apply to very few colleges than those included in the 2016 final regulations. They also asserted that these triggering events constitute such significant evidence of concern that it may well be too late to prevent further damage and liabilities for taxpayers will likely not provide enough financial protection to explain the difference between the recovery percentages

[173] 81 FR 76067. See burden calculation for § 685.300(e) and (f).

[174] 83 FR 37306. See burden calculation for § 658.304.

estimated in the 2016 final regulations and those included in the 2018 NPRM. Accordingly, the commenter said that use of the triggers will not increase the effectiveness of financial protection over time. Thus, they said there is little reason to believe the share of borrower defense discharges recovered from institutions will increase over time at all; it may even decrease, since some of these events will likely lead to the closure of the school and the removal of the riskiest institutions from the marketplace.

Discussion: The Department appreciates the commenter's detailed comments about the recovery rate assumption and addresses the comment in the *Net Budget Impacts* section of this RIA. The top recovery rate in the main scenario was reduced to 20 percent. Additionally, the sensitivity run related to recovery rates and the no-recovery scenario described after Table 4 are designed to reflect the possibility that recoveries will be lower than anticipated in the main estimate, and the Department believes this is appropriate to address the concerns raised by the commenter about the level of recoveries.

Changes: Recovery rate assumption updated as described in Net Budget Impacts section.ne.

3. Costs, Benefits, and Transfers

These final regulations will affect all parties participating in the title IV, HEA programs. In the following sections, the Department discusses the effects these proposed regulations may have on borrowers, institutions, guaranty agencies, and the Federal government.

3.1. Borrowers

These final regulations would affect borrowers through borrower defense to repayment applications, closed school discharges, false certification discharges, loan rehabilitation, and institutional disclosures. Borrowers may benefit from an ability to appeal to the Secretary if a guaranty agency denies their closed school discharge application, from lower tuition and increased campus stability associated with longer leases, and from a more generous ''look back'' period with regard to closed school loan discharges.

In response to comments, the Department will provide the opportunity to seek loan relief through borrower defense to repayment to all borrowers, regardless of that borrower's repayment status. Some borrowers may incur burden to review institutional disclosures on mandatory arbitration and class action waivers or complete applications for loan discharges, and there could be additional burden to borrowers who would otherwise, through no affirmative action on their part, be included in a class-action proceeding.

3.1.1. Borrower Defenses

Upon further consideration and in response to comments, the Department will provide the opportunity to seek loan relief through borrower defense to repayment to all borrowers, regardless of that borrower's repayment status. However, the Federal defense to repayment standard for loans first disbursed on or after July 1, 2020, includes certain limits and conditions to prevent frivolous or stale claims, including a three-year period within which to apply after exiting the institution and a requirement that borrowers demonstrate both reliance and harm. The Department estimates this change will result in more applications relative to the NPRM, but fewer than that expected under the 2016 final regulations. Borrowers are more likely to have their borrower defense to repayment applications processed and decided more quickly if the Department has a smaller volume of claims.

Relative to the 2016 regulations, the final regulations do not include a group claim process because the evidence standard and the fact-based determination of the borrower's harm that the Department is requiring in these final regulations necessitates that each claim be adjudicated separately to determine the borrower's reliance on the institution's alleged misrepresentation. The definition of misrepresentation in these final regulations would make borrowers who may have been included in the group determination that cannot prove individual reliance and harm ineligible for borrower defense loan discharges.

When borrower defense to repayment discharge applications are successful, dollars are transferred from the Federal government to borrowers because borrowers are relieved of an obligation to pay the government for the loans being discharged. As further detailed in the *Net Budget Impacts* section, the Department estimates that annualized transfers from the Federal Government to affected borrowers, partially reimbursed by institutions, would be reduced by $512.5 million. This is based on the difference in cashflows associated with loan discharges when these final regulations are compared to the 2016 final regulations as estimated in the President's Budget 2020 baseline and discounted at 7 percent. To the extent borrowers with successful defense to repayment claims have subsidized loans, the elimination or recalculation of the borrowers' subsidized usage periods could relieve them of their responsibility for accrued interest and make them eligible for additional subsidized loans.

A defense to repayment discharge is one remedy available to students, among other available avenues for relief. Students harmed by institutional misrepresentations continue to have the right to seek relief directly from the institution through arbitration, lawsuits in State court, or other available means. Borrowers would possibly receive quicker and more generous financial remedies from institutions through these means since schools may be more motivated to make students whole through the arbitration process in order to avoid defense to repayment claims. The 2016 final regulations prohibited mandatory pre-dispute arbitration agreements, and while institutions may have continued to provide voluntary arbitration, schools may not have made it obvious to students how to avail themselves of arbitration opportunities. The final regulations do not prohibit institutions from including mandatory pre-dispute arbitration clauses and class action waivers in enrollment agreements, but require institutions to provide the borrower with information about the meaning of mandatory arbitration clauses, class action waivers, and how to use the arbitration process in the event of a complaint against the institution. The benefit of arbitration is that it is more accessible and less costly to students and institutions than litigation. For borrowers who seek relief from a court, there may be additional advantages since courts can award damages beyond the loan value, which the Department cannot do; although, this could be offset by the expense in both time and dollars of a lawsuit. In addition, borrowers who seek relief through arbitration may also be awarded repayment of tuition charges that were paid in cash or through other forms of credit, which the Department cannot do.

3.1.2. Closed School Discharges

Some borrowers may be impacted by the changes to the closed school discharge regulations. These final regulations would, for a loan first disbursed on or after July 1, 2020, extend the window for a Direct Loan borrower's eligibility for a closed school discharge from 120 to 180 days from the date the school closed. Under the final regulations, a borrower whose school closed would qualify for a closed school discharge unless the borrower accepted a teach-out opportunity approved by the institution's accrediting agency and, if

applicable, the institution's State authorizing agency; unless the school failed to meet the material terms of the teach-out plan approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, such that borrower was unable to complete the program of study in which the borrower was enrolled. The final regulations also provide that borrowers who transfer their credits to another institution would not be eligible for a closed school discharge. These final regulations also revise the provision in the 2016 Direct Loan regulations that provides for an automatic closed school discharge without an application for students that did not receive a closed school discharge or re-enroll at a title IV participating institution within three years of a school's closure to apply to schools that closed on or after November 1, 2013 and before July 1, 2020. While the automatic discharge would have benefitted some students who no longer would need to submit an application to receive relief, it may have disadvantaged students who wish to continue their education at a later time or provide proof of credit completion to future employers. There could also be tax implications associated with closed school loan discharges, and borrowers should be aware of those implications and given the opportunity to make a decision according to their needs and priorities.

The expansion of the eligibility period for a closed school discharge will increase the number of students eligible under this provision and encourage institutions to provide opportunities for students to complete their programs in the event that a school plans to close. The reduced availability of closed school discharges because of the elimination of the three-year automatic discharge for schools that close on or after July 1, 2020 may reduce debt relief for students. As further detailed in the *Net Budget Impacts* section, the Department estimates that annualized closed school discharge transfers from the Federal Government to affected borrowers would be reduced by $37.2 million. This is based on the difference in cashflows associated with loan discharges when the final regulations are compared to the 2016 final regulations as estimated in the President's Budget 2020 baseline (PB2020) and discounted at 7 percent.

The Department's accreditation standards [175] require accreditors to approve teach-out plans at institutions under certain circumstances, which emphasizes the importance of these plans to ensuring that students have a chance to complete their program should their school close. Teach-out plans that would require extended commuting time for students or that do not cover the same academic programs as the closing institution likely would not be approved by accreditors. In addition, an institution whose financial position is so degraded that it could not provide adequate instructional or support services would similarly likely not have their teach-out plan approved. In the case of the precipitous closures of certain institutions in 2015 and 2016, it is possible that enabling those institutions to offer teach-out plans to their current students—including by arranging teach-outs plans delivered by other institutions or under the oversight of a qualified third party—could have benefited students and saved hundreds of millions of dollars of taxpayer funds.

Large numbers of small, private non-profit colleges could close in the next 10 years, which could significantly increase the number of borrowers applying for closed school discharges if these institutions are not encouraged to provide high quality teach-out options to their students.[176] For example, Mt. Ida College announced [177] that it would close at the end of the Spring 2018 semester and while the institution had considered entering into a teach-out arrangement with another institution, this did not materialize. While there may be other institutions that have accepted credits earned at Mt. Ida, due to the distance between Mt. Ida and other campuses, it may be impractical for the student to attend another institution.[178] A proper teach-out plan may have allowed more students to complete their program. The requirement of accreditors to approve such options ensures protection for borrowers to ensure that a teach-out plan provides an accessible and high-quality option for students to complete the program.

3.1.3. False Certification Discharges

Some borrowers may be impacted by the changes to the false certification discharge regulations, although this provision of the final regulations simply updates the regulations to codify current practice required as a result of the removal of the ability to benefit option as a pathway to eligibility for title IV aid. In the past, a student unable to obtain a high school diploma could still receive title IV funds if he or she could demonstrate that he or she could benefit from a college education.

With that pathway eliminated by a statutory change, prospective students unable to obtain their high school transcripts when applying for admission to a postsecondary institution would be allowed to certify to their institutions that they graduated from high school or completed a home school program and qualify for Federal financial aid. At the same time, it will disallow students who misrepresent the truth in signing such an attestation from subsequently seeking a false certification discharge. Although the Department has not seen an increase in false certification discharges as a result of the elimination of the ability to benefit option, given the increased awareness of various loan discharge programs, the Department believes it is prudent to set forth in regulation that if a student falsely attests to having received a high school diploma, the student would not be eligible for a false certification discharge. Codifying this practice will not have a significant impact, but will ensure that students who completed high school but are unable to obtain an official diploma or transcript will retain the opportunity to participate in postsecondary education. The Department does not believe that there are significant numbers of students who are unable to obtain an official transcript or diploma, but recent experiences related to working with institutions following natural disasters demonstrates that this alternative for those unable to obtain an official transcript is important.

3.1.4. Institutional Disclosures of Mandatory Arbitration Requirements and Class Action Waivers

Borrowers, students, and their families would benefit from increased transparency from institutions' disclosures of mandatory arbitration clauses and class action lawsuit waivers in their enrollment agreements. Under the final regulations, institutions would be required to disclose that their enrollment agreements contain class action waivers and mandatory pre-dispute arbitration clauses. Institutions would be required to make these disclosures to students, prospective students, and the public on institutions' websites and in the admission's section of their catalogue. Further, borrowers would be notified of these during entrance counselling. As further discussed in the *Paperwork Reduction Act* section, we estimate there is 5 minutes of burden to 342,407 borrowers

[175] 34 CFR 602.24(c).

[176] *www.insidehighered.com/news/2017/11/13/spate-recent-college-closures-has-some-seeking-long-predicted-consolidation-taking.*

[177] *www.insidehighered.com/news/2018/04/09/mount-ida-after-trying-merger-will-shut-down.*

[178] *www.insidehighered.com/news/2018/04/23/when-college-goes-under-everyone-suffers-mount-idas-faculty-feels-particular-sense.*

annually at $16.30 [179] per hour to review these notifications during entrance counseling, for an annual burden of $446,506.

As institutions began preparing to implement the 2016 final regulations, some eliminated both mandatory and voluntary arbitration provisions to be sure they would be in compliance with the letter and spirit of the regulations. Under the newly finalized regulations, institutions would be able to include these provisions in their enrollment agreements. The effect will be to allow schools to require borrowers to redress their grievances through a quicker and less costly process, which we believe will benefit both the institution and the borrower by introducing the judgment of an impartial third party, but at a lower cost and burden than litigation. Arbitration may be in the best interest of the student because it could negate the need to hire legal counsel and result in adjudication of a claim more quickly than in a lawsuit or the Department's 2016 borrower defense claim adjudication process. Mandatory arbitration also reduces the cost impact of unjustified lawsuits to institutions and to future students, since litigation costs may be ultimately passed on to current and future students through tuition and fees. As discussed in more depth in the preamble, arbitration also increases the likelihood that damages will be paid directly to students, rather than used to pay legal fees.

However, with the removal of the requirement to report certain arbitration information to the Department, if more disputes are resolved in arbitration there may be less feedback to the Department, the public and prospective students about potential issues at institutions. This may extend the period that misrepresentation by institutions may go undetected, potentially exposing more borrowers and increasing taxpayer exposure to potential claims.

3.2. Institutions

Institutions will be impacted by the final regulations in the areas of borrower defenses, closed school discharges, false certification discharges, FASB accounting standards, financial responsibility standards, and information disclosure. The benefits to institutions include a decrease in the number of reimbursement requests resulting from Department-decided loan discharges based on borrower defenses, closed school, and false certification; an increased involvement in the borrower defense adjudication process; the ability to continue to receive the benefit from the cost savings associated with existing longer-term leases and reduced relocation costs until such time as the composite score methodology can be updated through future negotiated rulemaking; and the ability to incorporate arbitration and class action waivers in enrollment agreements. Institutions may incur costs from increased arbitration and internal dispute resolution processes, providing teach-out plans in the event of a planned school closure, and compliance with required disclosure and reporting requirements.

3.2.1. Borrower Defenses

Many institutions, those that do not have a significant number of claims filed against them would not incur additional burden as a result of the final regulatory changes in the borrower defense to repayment regulations. Those institutions against which claims are filed will be given the opportunity to provide evidence to the Department during claim adjudication. Further, these final regulations include a three-year period of limitations, which aligns with institutions' records retention requirements. We further estimate that successful defense to repayment applications under the Federal standard and process will affect only a small proportion of institutions. The Department expects that the changes in these regulations would result in fewer successful defense to repayment applications as compared to the 2016 final regulations, and therefore fewer discharges of loans. Therefore, the Department expects to request fewer repayment transfers from institutions to cover discharges of borrowers' loans. Under the main budget estimate explained further in the *Net Budget Impacts* section, the Department estimates an annual reduction of reimbursements of borrower defense claims from institutions to the government of $153.4 million under the seven percent discount rate.

However, the Department believes that by requiring institutions that utilize mandatory arbitration clauses and class action waivers to provide plain language disclosures along with additional information at entrance counseling, more students may utilize arbitration to settle disputes. As a result, institutions may have increased costs related to increased use of internal dispute processes; although, the Department was unable to monetize those costs as it has limited information about the procedures used in different institutions and the associated costs.

3.2.2. Closed School Discharges

A small percentage of institutions close annually, with 630 closures at the 8-digit OPEID branch level in 2018. Some institutions provide teach-out opportunities to enable students to complete their programs and others leaving students to navigate the closure on their own, resulting in their eligibility for closed school loan discharges. The final regulations expand the eligibility window for students with Direct loans first disbursed on or after July 1, 2020, who left the institution but are still eligible to receive closed school loan discharges from 120 to 180 days. The final regulations also clarify that a borrower who accepts a teach-out plan would not qualify for a closed school discharge, unless the institution failed to meet the material terms of the teach-out plan, such that the borrower was unable to complete the program of study in which the borrower was enrolled.

The Department has worked with a number of schools that have successfully completed teach-out plans. As additional schools close in the future, the Department wants to encourage them to offer orderly teach-outs rather than close without making arrangements to protect their students. We believe the final regulations will encourage institutions to provide teach-out opportunities, despite their potential high cost, if doing so would reduce the total liability that could result from having to reimburse the Secretary for losses due to closed school discharges. Title IV-granting institutions are required by their accreditors [180] to have an approved teach-out plan on file and to update that plan with more specific information in the event that the institution is financially distressed, is in danger of losing accreditation or State authorization, or is considering a voluntary teach-out for other reasons. Accreditors, and in some cases, State authorizing agencies, must approve teach-out plans and carefully monitor teach-out activities. Students who opt to participate in an approved teach-out plan and who are provided that opportunity as outlined in the plan will not be eligible for a closed school loan discharge under this provision. As in the current regulation, students who transfer their credits will also not be eligible for a closed school discharge.

The Department is revising the regulatory provision that provides automatic closed school discharges for Direct Loan borrowers who do not complete their program within three years after the school closed to apply to

[179] Students' hourly rate estimated using BLS for Sales and Related Workers, All Other, available at: *www.bls.gov/oes/2017/may/oes_nat.htm#41-9099.*

[180] 34 CFR 602.24(c).

schools that closed on or after November 1, 2013 and before July 1, 2020. This is expected to reduce closed school discharges and the potential institutional liability associated with them.

3.2.3. False Certification Discharges

A small percentage of institutions are affected by false certification discharges annually. The final regulations would permit institutions to obtain a written assurance from prospective students who completed high school but are unable to obtain their high school transcripts when applying for admission and Federal financial aid, without exposing themselves to financial liabilities should those students misrepresent the truth in their attestations. To ensure that the unintended consequence of this policy change is not an increase in the frequency or cost of false certification discharges, the Department believes it is necessary to specify that a student who misrepresents his or her high school completion status under penalty of perjury cannot then receive a false certification loan discharge due to non-completion of high school or a home school program. The final regulations will protect institutions as they seek to serve students who are pursuing postsecondary education but cannot obtain an official diploma or transcript. We believe this final regulation will not have a significant impact on institutions because the Department receives very few false certification discharge requests and, as discussed further in the *Net Budget Impacts* section, the Department does not include any false certification discharge recoupment transfers in its estimate.

3.2.4. Financial Responsibility Standards

Both the 2016 final regulations and these final regulations include conditions under which institutions would have to provide a letter of credit or other form of financial protection in order to continue to participate in the title IV, HEA programs. The following table compares the financial responsibility triggers established by the 2016 final regulations and in these final regulations. Mandatory events or actions automatically result in a determination that the institution is not financially responsible and trigger a request for a letter of credit or other financial protection from the institution, whereas discretionary events or actions give the Secretary the discretion to make that determination at the time the event or action may occur. In a change from the NPRM, if an institution is subject to two discretionary events within the period between calculation of composite scores, the events will be treated as mandatory events unless a triggering event is resolved before any subsequent event(s) occurs. These final regulations also keep high annual dropout rates as a discretionary trigger, as was the case in the 2016 final rule, with the specific threshold to be determined in the future.

TABLE 2—FINANCIAL RESPONSIBILITY TRIGGERS

Financial responsibility trigger	2016 regulation	Final regulation	Change summary
Mandatory Actions or Events: Recalculated Composite Score <1.0			
Action or Event triggers Secretary decision and may result in a letter of credit or other financial protection to Department.	Actual or projected expenses incurred from a triggering event.	Actual expense incurred from a triggering event.	Eliminates projected expenses.
Defense to repayment that does or could lead to an institution repaying government for discharges.	Department has received or adjudicated claims associated with the institution.	Department has discharged loans resulting from adjudicated claims.	Changed from Discretionary to Mandatory or reduced to actual discharges only.
Lawsuits and Other Actions that leads or could lead to institution paying a debt or incurring a liability.	Final judgment in a judicial proceeding, administrative proceeding or determination, or final settlement; legal action brought by a Federal or State Authority pending for 120 days; or other lawsuits that have survived a motion for summary judgment or the time for such a motion has passed.	Final judgment or determination in a judicial or administrative proceeding or action.	Reduced to final judgments or determinations with public records.
Withdrawal of Owner's Equity at proprietary institutions.	Excludes transfers between institutions with a common composite score.	Excludes transfers to affiliated entities included in composite score, reduces reporting of wage-equivalent distributions.	Revised, clarifies the most common types of withdrawals.
Mandatory Actions or Events			
Non-Title IV Revenue (90/10): Fails in most recent fiscal year.	At proprietary institutions	At proprietary institutions	Reclassified as a discretionary trigger.
Cohort Default Rates	Two most recent rates are 30 percent or above after any challenges or appeals.	Two most recent rates are 30 percent or above after any challenges or appeals.	Reclassified as a discretionary trigger.
SEC or Exchange Actions regarding the institution's stock (Publicly Traded Institutions).	Warned SEC may suspend trading; failed to file required report with SEC on-time; notified of noncompliance with Stock exchange requirements; or Stock delisted.	SEC suspends trading or stock delisted.	Changed from an SEC warning, which does not require shareholder notification, to events in which shareholder notification is required.

TABLE 2—FINANCIAL RESPONSIBILITY TRIGGERS—Continued

Financial responsibility trigger	2016 regulation	Final regulation	Change summary
Accreditor Actions—Teach-Outs	Accreditor requires institution to submit a teach-out plan for closing the institution, a branch, or additional location.	Removed	Regulatory update.
Gainful Employment	Programs one year away from losing their eligibility for title IV, HEA program funds due to GE metrics.	Removed	Regulatory update.
Discretionary Actions or Events			
Accreditor Actions—probation, show-cause, or other equivalent or greater action.	Accreditor takes action on institution.	Institutional accreditor issues a show-cause order that, if not resolved, would result in the loss of institutional accreditation; accreditation is removed.	Limits trigger to accreditor actions that do or could imminently lead to loss of institutional accreditation and/or closure of the school.
Security or Loan Agreement violations.	Creditor requires an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees.	Creditor requires an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees.	No Change.
Cited for Failing State licensing or authorizing agency requirements.	Notified of noncompliance with any provision.	Notified of noncompliance relating to termination or withdrawal of licensure or authorization if institution does not take corrective action.	Reduced reporting of State actions.
Significant Fluctuations in Pell Grant and Direct Loan funds.	Changes in consecutive award years, or over a period of award years, not due to title IV program changes.	Removed	None, not directly relevant.
Financial Stress Test developed or adopted by the Secretary.	Institution fails the test but specific stress test never proposed or developed.	Removed	None because test never created.
High Drop-Out Rates, as defined by the Secretary.	Institution has high annual drop-out rate but Specific threshold never developed.	Included, a revision from the NPRM.	None.
Anticipated Borrower Defense Claims.	Secretary predicts claims as a result of a lawsuit, settlement, judgment, or finding from a State or Federal administrative proceeding.	Removed	Reduced Liability.

Some institutions may incur burden from the requirement to report any action or event described in § 668.171(e) within the specified number of days after the action or event occurs. As further explained in the *Paperwork Reduction Act of 1995* section, the Department estimates the burden for reporting these events to the Secretary would be 720 hours annually for private schools and 2,274 hours for proprietary institutions for a total burden of 2,994 hours. Using an hourly rate of $44.41,[181] we estimate that the costs incurred by this regulatory change would be $132,964 annually ($44.41 * 2,994).

FASB is a standard-setting body that establishes generally accepted accounting principles and the Department requires that institutions participating in the title IV, HEA programs file audited financial statements annually, with the audits performed under FASB standards. Therefore, financial statements will begin to contain elements that are either new or reported differently, including long-term lease liabilities. This topic was not addressed in the 2016 final regulations, but was included in the 2018 NPRM.

Changes in the definition of terms used under the financial responsibility standards will align the regulations with current practice and FASB standards.[182] However, the new FASB lease standard could negatively affect or cause an institution to fail the composite score and the Department has no mechanism to make a timely adjustment to the composite score calculation to accommodate this change. The Department also has no data to understand what the impact of this change will be on institutional composite scores. Therefore, the Department must obtain audited financial statements prepared in accordance with FASB standards, and will calculate one composite score for an institution by grandfathering in leases entered into prior to December 15, 2018 (pre-implementation leases) and applying the new standard to any leases entered into on or after that date (post-implementation leases).

The Department may use the data it will collect under the final regulations to conduct analyses that might inform future rulemaking to update the composite score methodology. As explained further in the *Paperwork Reduction Act of 1995* section, 1,896 proprietary institutions and 1,799 private institutions will each need 1 hour annually to prepare a

[181] Hourly wage data uses the Bureau of Labor Statistics, available at *swww.bls.gov/ooh/management/postsecondary-education-administrators.thm.*

[182] *www.fasb.org/jsp/FASB/Page/LandingPage&cid=1175805317350.*

Supplemental Schedule to post along with their annual audit ((1,896 + 1,799) × 1 hour × $44.41). This will result in an additional annual burden of $164,095. The Department is not yet receiving these data on institutions' financial statements, so it is unable to quantify anticipated changes.

3.2.5. Enrollment Agreements

The final regulations would permit institutions to include mandatory arbitration clauses and class action waivers in enrollment agreements they have with students receiving title IV financial aid. These provisions were prohibited by the 2016 regulations. The recent Supreme Court decision in *Epic Systems Corp.* v. *Lewis,* 138 S. Ct. 1612 (2018) held that arbitration clauses in employment contracts must be enforced by the courts as written, in essence confirming the right of private parties to sign contracts that compel arbitration and waive class action rights. Institutions may benefit from arbitration in that it is a faster and less expensive way to resolve disputes, while reducing reputational effects; however, they may incur costs resulting from an increased use of arbitration under the final regulations.

3.2.6. Institutional Disclosures

Some institutions will incur costs under the proposed disclosure requirements. Institutions that include mandatory pre-dispute arbitration clauses or class action waivers in their enrollment agreements would be required to make certain disclosures. As further explained in the *Paperwork Reduction Act of 1995* section, the Department estimates the burden for making these disclosures would affect 944 proprietary institutions for a total of 4,720 hours annually. Using an hourly rate of $44.41,[183] we estimate the costs incurred by this regulatory change would be $209,615. Also as discussed in the *Paperwork Reduction Act of 1995* section, we estimate these same institutions would be required to include this information to borrowers during entrance counseling, for a further burden of 3 hours each annually, totaling $125,769 annually (944 * 3 * 44.41). Therefore, we estimate the total burden for disclosures would be $335,384 annually ($209,615 + $125,769).

3.3. Guaranty Agencies

In the 2018 NPRM, the Department estimated one-time costs of $14,922 and annual costs of $3,286 for systems updates and reporting related to borrowers eligible for closed school discharges and for forwarding escalated review requests to the Secretary. As noted in the preamble discussion of Departmental Review of Guaranty Agency Denial of Closed School Discharge Requests, these provisions are currently in effect from the 2016 Final Rule and are not included in these final regulations. Therefore, the estimated costs from the NPRM are not included in this Regulatory Impact Analysis. The Department does not have data on interest capitalization and collection costs for rehabilitated loans to estimate the impact of the changes in the final regulations.

3.4. Federal Government

These final regulations would affect the Federal government's administration of the title IV, HEA programs. The Federal government would benefit in several ways, including reductions in student loan discharge transfers, reduced administrative burden, and increased access to data. The Federal government would incur costs to update its IT systems to implement the changes. The changes to the financial responsibility triggers may reduce recoveries relative to the 2016 final rule. The Department believes that it has retained many of the key triggers, but, as noted in the Net Budget Impacts section, these changes could increase the costs to taxpayers.

3.4.1. Borrower Defenses

The final regulations permit borrowers to submit claims to the Department regardless of loan status but impose a statute of limitations. It is more likely that the cost of misrepresentation would be incurred by institutions committing the act or omission than the taxpayer, because the Department would recoup defense to repayment discharge transfers from institutions. Further, because the Department estimates it will receive fewer borrower defense applications under the final regulations than under the 2016 regulations, the Department expects a reduction in administrative burden.

3.4.2. Loan Discharges

Under the final regulations, the Department would expect to process and award fewer closed school and potentially fewer false certification loan discharges than it would have under the 2016 regulations. To the extent defense to repayment, closed school, and false certification loan discharges are not reimbursed by institutions, Federal Government resources that could have been used for other purposes will be transferred to affected borrowers. As further detailed in the *Net Budget Impacts* section, the Department estimates that annualized transfers from the Federal government to affected borrowers, partially reimbursed by institutions, would be reduced by $512.5 million for borrower defenses and $37.2 million for closed school discharges with reductions in reimbursement from institutions of $153.4 million annually. This is based on the difference in cashflows associated with loan discharges when the final regulation is compared to the President's Budget 2020 baseline (PB2020) and discounted at 7 percent.

The Department has also determined that it is the appropriate party to provide affected students with a closed school discharge application and a written disclosure describing the benefits and consequences of a closed school discharge. When institutions were expected to fill this role, the estimated burden was approximately $70,000. As the Department already is in contact with affected students and has the relevant materials, we do not expect a significant increase in administrative burden after some initial set up costs.

3.4.3. Financial Responsibility Standards

The Department will benefit from receiving updated financial statements consistent with FASB standards and therefore would have data necessary for developing updated composite score regulations through future rulemaking. The financial responsibility disclosures will enable the Department to receive the information necessary to calculate the composite score.

The Department would incur one-time costs for modifying eZ-Audit and other systems to collect the data needed to calculate composite scores under the new FASB reporting requirements and other systems to collect financial responsibility disclosures. The Department has not yet conducted the Independent Government Cost Estimate (IGCE) to determine the costs for making these system changes. However, the Department has not yet developed its internal process for implementing the final regulations, which may necessitate a software modification or individually-generated calculations; consequently, it is unable to estimate the change in administrative burden. Therefore, the Department is unable to estimate its burden for implementing the regulatory changes in the financial responsibility provisions.

[183] Hourly wage data uses the Bureau of Labor Statistics, available at *www.bls.gov/ooh/management/postsecondary-education-administrators.thm.*

4. Net Budget Impacts

These final regulations are estimated to have a net Federal budget impact over the 2020–2029 loan cohorts of $ − 11.075 billion in the primary estimate scenario, including $ − 9.812 billion for changes to the defense to repayment provisions and $ − 1.262 billion for changes related to closed school discharges. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. Several comments were received about the assumptions for the budget estimate presented in the NPRM and those are addressed in the Discussion portion of this *Net Budget Impact* section.

The Net Budget Impact compare these regulations to the 2016 final regulations as estimate in the 2020 President's Budget baseline (PB2020). This baseline assumed that the borrower defense regulations published by the Department on November 1, 2016, would go into effect and utilized the primary estimate scenario,[184] described in the final rule published February 14, 2018.[185] The primary difference with the PB2019 baseline was the effective date and the cohorts subject to the Federal standard established by the 2016 final rule with cohorts 2017 to 2019 being subject to the 2016 Federal standard in the PB2020 baseline. Several commenters objected to the use of the PB2019 baseline as the basis for the budget estimate in the NPRM and the discrepancy with the framing of the regulation in comparison to the 1995 regulation in other sections of the NPRM and believed it could violate the APA. The Department maintains that the most recent budget baseline, now PB2020, is the appropriate baseline for estimating the net budget impact of these final regulations. In the absence of these regulations, the 2016 final regulations would go into effect and that is reflected in the PB2020 baseline. We believe this comparison is appropriate and accurately captures that these final regulations are expected to reduce the amount of claims paid to students by the Federal government and reduce the institutional liability for reimbursing those claims.

The final regulatory provisions with the greatest impact on the Federal budget are those related to the discharge of borrowers' loans. Borrowers may pursue closed school, false certification, or defense to repayment discharges. The precise allocation across the types of discharges will depend on the borrower's eligibility and ease of pursuing the different discharges, and we recognize that some applications may be fluid in classification between defense to repayment and the other discharges, particularly closed school. In this analysis, we assign any estimated effects from defense to repayment applications to the defense to repayment estimate and the remaining effects associated with eligibility and process changes related to closed school discharges to the closed school discharge estimate.

4.1. Defense to Repayment Discharges

As noted previously, the Department had to incorporate the changes to the defense to repayment provisions related to the 2016 final regulations into its ongoing budget estimates, and changes described here are evaluated against that baseline. In our main estimate, based on the assumptions described in Table 3, we present our best estimate of the impact of the changes to the defense to repayment provisions in the final regulation.

4.1.1. Assumptions and Estimation Process

The net present value of the reduced stream of cash flows compared to what the Department would have expected from a particular cohort, risk group, and loan type generates the expected cost of the proposed regulations. We applied an assumed level of school misconduct, allowable claims, defense to repayment applications success, and recoveries from institutions (respectively labeled as Conduct Percent, Allowable Applications Percent, Borrower Percent, and Recovery Percent in Table [3]) to loan volume estimates to generate the estimated net number of borrower defense applications for each cohort, loan type, and sector. Table [3] presents the assumptions for the main budget estimate with the budget estimate for each scenario presented in Table [4]. We also estimated the impact if the Department received no recoveries from institutions, the results of which are discussed after Table 4.

The model can be described as follows: To generate gross claims (gc), loan volumes (lv) by sector were multiplied by the Conduct Percent (cp), the Allowable Applications Percent (aap) and the Borrower Percent (bp); to generate net claims (nc) processed in the Student Loan Model, gross claims were then multiplied by the Recovery Percent (rp). That is, gc = (lv * cp * aap * bp) and nc = gc − (gc * rp). The Conduct Percent represents the share of loan volume estimated to be affected by institutional behavior resulting in a defense to repayment application. The Borrower Percent captures the percent of loan volume associated with approved defense to repayment applications, with factors such as an individual claims process, proof of reliance and financial harm requirement being key determinants of the reduced level compared to the PB2020 baseline. The Recovery Percent estimates the percent of gross claims reimbursed by institutions. The Allowable Applications Percent replaces the Defensive Claims Percent from the NPRM and captures the share of applications estimated to be made within the 3-year timeframe for borrowers in all repayment statuses to apply for defense to repayment. The numbers in Table 3 are the percentages applied for the main estimate and PB2020 baseline scenarios for each assumption for cohorts 2020–2029.

TABLE 3—ASSUMPTIONS FOR MAIN BUDGET ESTIMATE COMPARED TO PB2020 BASELINE

Cohort	PB2020 baseline			Final rule		
	Pub	Priv	Prop	Pub	Priv	Prop
Conduct Percent						
2020	1.7	1.7	11.6	1.62	1.62	11.02
2021	1.5	1.5	9.8	1.43	1.43	9.31
2022	1.4	1.4	8.8	1.33	1.33	8.36

[184] See 81 FR 76057 published November 1, 2016, available at *ifap.ed.gov/fregisters/attachments/FR110116.pdf.*

[185] See 83 FR 6468, available at *www.gpo.gov/fdsys/pkg/FR-2018-02-14/pdf/2018-03090.pdf.*

TABLE 3—ASSUMPTIONS FOR MAIN BUDGET ESTIMATE COMPARED TO PB2020 BASELINE—Continued

Cohort	PB2020 baseline			Final rule		
	Pub	Priv	Prop	Pub	Priv	Prop
2023	1.3	1.3	8.4	1.24	1.24	7.98
2024	1.2	1.2	8	1.14	1.14	7.6
2025	1.2	1.2	7.8	1.14	1.14	7.41
2026	1.1	1.1	7.7	1.05	1.05	7.32
2027	1.1	1.1	7.7	1.05	1.05	7.32
2028	1.1	1.1	7.7	1.05	1.05	7.32
2029	1.1	1.1	7.7	1.05	1.05	7.32
Allowable Applications Percent (Not in PB2020 Baseline)						
All Cohorts				70	70	70
Borrower Percent						
2020	42.4	42.4	54.6	3.3	3.3	4.95
2021	46.7	46.7	60	3.75	3.75	5.475
2022	50	50	63	4.125	4.125	5.925
2023	50	50	65	4.5	4.5	6.3
2024	50	50	65	4.8	4.8	6.75
2025	50	50	65	5.25	5.25	6.975
2026	50	50	65	5.25	5.25	7.5
2027	50	50	65	5.25	5.25	7.5
2028	50	50	65	5.25	5.25	7.5
2029	50	50	65	5.25	5.25	7.5
Recovery Percent						
2020	75	28.8	28.8	75	16	16
2021	75	31.68	31.68	75	20	20
2022	75	33.26	33.26	75	20	20
2023	75	34.93	34.93	75	20	20
2024	75	36.67	36.67	75	20	20
2025	75	37.4	37.4	75	20	20
2026	75	37.4	37.4	75	20	20
2027	75	37.4	37.4	75	20	20
2028	75	37.4	37.4	75	20	20
2029	75	37.4	37.4	75	20	20

As in previous estimates, the recovery percentage reflects the fact that public institutions are not subject to the changes in the financial responsibility triggers because of their presumed backing by their respective States, which has never depended upon or been linked to a specific provision of any borrower defense regulation. Therefore, the PB2020 baseline and main recovery scenarios are the same for public institutions and set at a high level to reflect the Department's confidence in recovering amounts from the expected low number of claims against public institutions. The decrease in the recovery percentage assumption for private and proprietary institutions compared to the PB2020 baseline reflects the removal or modification of some financial responsibility triggers as described in Table 2. We do not specify how many institutions are represented in the estimate as the assumptions are based on loan volumes and the scenario could represent a substantial number of institutions engaging in acts giving rise to defense to repayment applications or could represent a small number of institutions with significant loan volume subject to a large number of applications. According to Federal Student Aid data center loan volume reports, the five largest proprietary institutions in loan volume received 25.7 percent of Direct Loans disbursed in the proprietary sector in award year 2017–18 and the 50 largest proprietary institutions represent 70.7 percent of Direct Loans disbursed in that same time period.[186] We were conservative in our estimates of the share of volume captured in the conduct percentage and the number of applications submitted in the Allowable Applications percentage as we did not want to underestimate costs associated with changes to the borrower defense regulations. Due to the similarities between the conduct covered by the standard in the proposed regulations and the standard in the 2016 final regulations, as described in the *Discussion* segment, the Conduct Percent did not change from the PB2020 Baseline as much as the Borrower Percent. Changes to the definition of misrepresentation to require reasonable reliance and a materiality threshold, as further described in the Analysis of Comments and Changes—Evidentiary Standard for Asserting a Borrower Defense section of this preamble are reflected in the changes to the Borrower Percent as part of the likelihood of the borrower succeeding with their defense to repayment. As recent loan cohorts progress further in their repayment cycles, if future data indicate that the percent of volume affected by conduct that meets the standard that would give rise to defense to repayment applications differs from current estimates, that difference will be reflected in future baseline re-estimates.

[186] Federal Student Aid, Student Aid Data: Title IV Program Volume by School Direct Loan Program AY2015–16, Q4, available at *studentaid.ed.gov/sa/about/data-center/student/title-iv* accessed August 22, 2016.

4.1.2. Discussion

The Department has some additional experience with processing defense to repayment applications and data on the approximately 230,000 applications received since 2015, but while this information has helped inform these estimates, it does not eliminate the uncertainty about institutional and borrower response to the final regulations. As noted earlier, given the limited number of applications that the Department has adjudicated, both in number and sector of institutions that are represented in this number, our data may not reflect the final results of the Department's review and approval process.

As a result of comments received and the Department's continued internal deliberations, a number of changes were made from the proposed regulation in the NPRM published July 31, 2018. Several commenters suggested allowing affirmative claims, expanding the timeframe for borrowers to make claims, and not requiring student borrowers to prove an institution's intent to mislead them. A number of commenters expressed concern that the Department's alternative in the proposed rule, which would provide relief to borrowers in a collection proceeding, could encourage students to engage in strategic defaults and would give preferential treatment to borrowers in default as compared to those in repayment. The Department agrees with these concerns and therefore is removing the references to affirmative or defensive claims. Instead, these final regulations provide a borrower—regardless of whether that borrower is in repayment, forbearance, deferment, default, or collection—an opportunity to submit a borrower defense to repayment application for loan forgiveness. Other commenters expressed concern that affirmative claims could lead to an increase in frivolous claims, which could increase the cost of responding to these claims on the part of the institution and the Department. In order to reduce the number of unjustified claims, the Department has included in these final regulations that borrowers must prove reasonable reliance on the institution's misrepresentation, that the misrepresentation caused financial harm to the borrower, and that the borrower submitted a borrower defense to repayment application three years from the date of graduation or withdrawal from the institution. The Department believes that a borrower would know within three years of departing the institution whether the institution had made a misrepresentation to the borrower and caused the borrower financial harm. This three-year period also aligns with the Department's records retention policies, which is important since the final regulation seeks to enable the Department to review a complete record, including the institution's response to the student's allegations of misrepresentation. That change is reflected in the Allowable Applications Percent and would likely reduce the estimated savings from the proposed regulations in the NPRM, although the precise outcome depends upon the balance between the 3-year timeframe for filing and removing the limitation to defensive claims only. Although some commenters supported the use of a preponderance of evidence standard in adjudicating claims, others commented that given the tendency for institutional misrepresentations to be referred to as fraud, the Department's standard should more closely align with that required by most states in adjudicating claims of consumer fraud. The Department has decided to retain the preponderance of evidence standard to provide a reasonable opportunity for a borrower to seek and receive student loan relief. Therefore, more borrowers, including those not in default or collections, will have an opportunity to prove their defense to repayment application should be approved, but the borrowers will have to prove more elements of misrepresentation including materiality, with the budget effects of the two changes going in opposite directions. Nothing in this regulation interferes with other rights of the borrower, including during a collections procedure, to assert equitable defenses, such as equitable recoupment. By itself, the Federal standard is not expected to significantly change the percent of loan volume subject to conduct that might give rise to a borrower defense claim. The changes in the misrepresentation definition and removal of the breach of contract claims will have some downward effect, so the conduct percent is assumed to be 95 percent of the PB2020 baseline level.

In addition, some commenters addressed specific aspects of the Department's assumptions and budget estimate or provided additional information for the Department to consider. These comments are addressed below in the discussion relevant to the specific assumptions.

As has been estimated previously, we are incorporating a deterrent effect of the borrower defense to repayment provisions on institutional behavior as is reflected in the decrease in the conduct percent in Table [3]. One commenter challenged the inclusion of a deterrent effect as unreasonable because several of the mechanisms that would act as a deterrent under the 2016 rule would not be included in these final regulations. The commenter argued that the prohibition of pre-dispute arbitration and increased financial responsibility triggers in the 2016 rule would result in higher liabilities and increased transparency with respect to institutional misrepresentation and form a basis for a deterrent effect on institutional conduct in the 2016 rule. According to the commenter, allowing pre-dispute mandatory arbitration and the reduced applications and resulting liabilities reduces the reputational risk to institutions and makes the inclusion of a deterrent effect unreasonable. This commenter also asserts that there will likely be an increase in the percentage of unlawful conduct due to the elimination of the gainful employment rule in addition to these final regulations. The Department acknowledges that the financial responsibility triggers have changed and the mechanisms to influence institutional conduct are different under these final regulations, but we still believe that the potential liability, political risk, and some reputational risk will continue to have some deterrent effect. We recognize that the timing or extent of this effect may vary from that under the 2016 rule and have developed an alternative scenario with no deterrent effect in the additional scenarios presented in Table 4 to capture the possibility raised by the commenter that institutions will not modify their behavior. A commenter also questioned the recovery percentage applied given the changes in the financial protection triggers compared to the 2016 rule. In particular, the commenter pointed to the increased timeframe for recovery and the increased number of more predictive financial responsibility triggers in the 2016 rule as reasons for higher recovery rates that increased over time from about 25 percent to 37 percent. The Department appreciates the comment and agrees with the commenter that the changes in the timeframe for recovery and changes in the triggers in the final regulations will reduce the percentage of gross claims recovered from institutions, as was reflected in the reduced recovery percentage in the NPRM of 16 percent to 25 percent compared to the PB2020 baseline of 28 to 37 percent. As there is limited information about recoveries related to borrower defense claims currently being processed, the exact percentage that will be recovered is uncertain, as it was for the 2016 final regulations, and the

Department and the commenter disagree on the extent to which recoveries will be reduced by the timeframe and the changes in triggers that the Department supports for the reasons detailed in the Analysis of Comments and Changes related to the Financial Responsibility provisions. These final regulations also revise the treatment of discretionary events so that they are treated as mandatory events if multiple events occur in the period between the calculation of composite scores, unless a triggering event is resolved before subsequent events occur. The discretionary trigger related to high dropout rates was also included after being removed in the NPRM. We believe these changes support the recovery level the Department has assumed for its estimates. Additionally, the sensitivity run related to recovery rates and the no-recovery scenario described after Table 4 are designed to reflect the possibility that recoveries will be lower than anticipated in the main estimate, and the Department believes this is appropriate to address the concerns raised by the commenter about the level of recoveries. Upon consideration, the Department does agree that the ramp-up in recovery rates is likely aggressive compared to the 2016 final regulations which included triggering events at earlier stages that the Department now considers an overreach. The ramp-up in recoveries has been modified to reflect this reconsideration, as demonstrated in Table 3.

Overall, we expect that the changes in the final regulations that will reduce the anticipated number of borrower defense applications are related more to changes in the process, not due to changes in the type of conduct on the part of an institution that would result in a successful defense, as demonstrated by the 95 percent overlap compared to the PB2020 baseline.

The final regulations modify the framework in which borrower defense to repayment applications are submitted in response to certain collection activities initiated by the Department, specifically administrative wage garnishment, Treasury offset, credit bureau default reporting, and Federal salary offset. As has always been the case, borrowers will be able to seek relief from their institutions in State or Federal courts or from State or Federal agencies, or through arbitration, but defense to repayment applications through the Department will be reserved to applications made in the first three years after the borrower leaves the institution. In the estimate for the NPRM, the Department used the assumed default rates by student loan model risk group to estimate the percent of loan volume associated with borrowers who, over the life of the loan, might be in a position to raise a defense to repayment. As the final regulations allow applications within three years of leaving an institution, the Department looked at existing borrower defense claims by time to submission from the date the borrower completed or exited the program. Approximately 30 percent of existing claims were submitted within 3-years or less. The Department anticipates that this share will increase when borrowers have the incentive to file within the 3-year timeframe established by the final regulations. Therefore, we used the approximately 67 percent of existing claims filed within 5 years as the basis for the 70 percent assumed for the Allowable Applications Percent in Table [3] to capture the potential effect of this incentive.

Several process changes contribute to the reduction in the Borrower Percent compared to the PB2020 baseline assumption. A separate assumption for the allowable applications provision was explicitly included so it could be varied in sensitivity runs or in response to comments. Specifically, the final regulations modify the definition of misrepresentation. This requires borrowers to prove reliance upon the misrepresentation and the financial harm they experienced. Another significant factor is the emphasis on determinations of individual applications and the lack of an explicit process for aggregating like applications. The Department will be able to group like applications against an institution for more efficient processing, but, even if there is a finding that covers multiple borrowers, relief will be determined on an individual basis and be related to the level of financial harm proven by the borrower. Together, these changes could require more effort on the part of individual borrowers to submit a borrower defense application, which is reflected in the change in the Borrower Percent assumption.

The net budget impact of the emphasis on other avenues for relief is complicated by the potential for amounts received in lawsuits, arbitration, or agency actions to reduce the amount borrowers would be eligible to receive through a defense to repayment filing. While it would be prudent for borrowers to use any funds received with respect to the Federal loans in such proceedings to pay off the loans, there is no mechanism in the proposed regulations to require this. This offset of funds received in other actions was also a feature in the 2016 final regulations, but the majority of applications processed did not have offsetting funds to consider due to the precipitous closure of two large institutions. Accordingly, we are not assuming a budgetary impact resulting from prepayments attributable to the possible availability of funds from judgments or settlement of claims related to Federal student loans. Another factor that could affect the number of defense applications presented is the role of State Attorneys General or State agencies in pursuing actions or settlements with institutions about which they receive complaints. The level of attention paid to this area of consumer protection could alert borrowers in a position to apply for a defense to repayment and result in a different number of applications than the Department anticipates. Evidence developed in such proceedings could be used by borrowers to support their individual applications. However, unlike in the 2016 final regulations, final judgments on the merits of such lawsuits or other allegations made by State Attorneys General will not provide an automatic basis for a successful borrower defense application, further contributing to the reduction of the assumed borrower percent.

The Department has used data available on defense to repayment applications, associated loan volumes, Departmental expertise, the discussions at negotiated rulemaking, information about past investigations into the type of institutional acts or omissions that would give rise to defense to repayment applications, and decisions of the Department to create new sanctions and apply them to institutions thus instigating precipitous closures to develop the main estimate and sensitivity scenarios that we believe will capture the range of net budget impacts associated with the defense to repayment regulations.

4.1.3. Additional Scenarios

The Department recognizes the uncertainty associated with the factors contributing to the main budget assumption presented in Table 3. For example, allowing institutions to present evidence may result in fewer unjustified findings of misrepresentation that lead to an adjudicated claim. We have not included the impact of this potential evidence in our calculations as we have no basis for determining the impact that an institutional defense will have on the adjudication of applications. The uncertainty in the defense to repayment estimate, given the unknown level of future school conduct that could give

rise to claims; institutions' reaction to the regulations to eliminate such activities; the impact of allowing institutions to present evidence in response to borrowers' applications; the expansion of College Scorecard data to include program level outcomes, potentially reducing the opportunity for misrepresentation by providing information on outcomes on a common basis; the extent of full versus partial relief granted; the level of State activity are reflected in additional analyses that demonstrate the effect of changes in the specific assumption being tested. Some commenters suggested additional runs that would single out individual aspects of the assumptions like the individual versus group processing of claims, a factor the commenter correctly points out is a major contributor to the reduction in the borrower percentage. However, the borrower defense assumptions have never been specified by individual components and the data to do so is limited, so the sensitivity runs are designed to capture the effect of changes in the assumptions, whatever the combination of factors that may cause the change. The Department believes this is appropriate and avoids a false sense of precision about the effect of changes to specific components of the assumptions.

The Department designed the following scenarios to isolate the assumption being evaluated and adjust it in the direction that would increase costs, increasing the Allowable Applications or Borrower Percent and decreasing the recovery percent. The first scenario the Department considered is that the Allowable Applications Percent will increase by 15 percent (AAP15). This could occur if economic conditions or strategic behavior by borrowers increase defaults or more borrowers than anticipated file applications within the 3-year window. In the second scenario the Department increased the Borrower Percent by 25 percent (Bor25) to reflect the possibility that outreach, model applications, or other efforts by students may increase the percent of loan volume associated with successful defense to repayment applications. As the gross borrower defense claims are generated by multiplying the estimated volumes by the Conduct Percent, Allowable Applications Percent, and the Borrower Percent, the scenarios capture the impact of a 15 percent or 25 percent change in any one of those assumptions. The Recovery Percentage is applied to the gross claims to generate the net claims, so the RECS scenario reduces recoveries by approximately 40 percent to demonstrate the impact of that assumption. We also included the combined scenario that includes those changes together as they may likely occur simultaneously. In response to commenter concerns about the potential absence of a deterrent effect on institutional behavior, we have added a scenario that keeps the highest level of the conduct percentage across all cohorts in the No Deter scenario. The final scenario (Bor50) takes a different approach and recognizes that the borrower percent changed significantly from the 2016 final rule. As we have discussed throughout the *Net Budget Impact* section, the impact associated with the changes made in these final regulations is speculative, so this run assumes a 50 percent reduction in the borrower percent from the 2016 final rule assumptions that are in the PB2020 budget baseline. This would reflect a scenario where many borrowers who may have been brought in through a group claim submit applications and are able to provide the information to support their application. The net budget impacts of the various additional scenarios compared to the PB2020 baseline range from $ − 7.97 billion to $ − 9.70 billion and are presented in Table 4.

TABLE 4—BUDGET ESTIMATES FOR ADDITIONAL BORROWER DEFENSE SCENARIOS

Scenario	Estimated costs for cohorts 2020–2029 (outlays in $mns)
Main Estimate	$ − 9,812
AAP15	− 9,699
Bor25	− 9,656
Recs40	− 9,690
No deterrence	− 9,567
Combined	− 9,047
Bor50	− 7,972

The transfers among the Federal government, affected borrowers, and institutions associated with each scenario above are included in Table 5, with the difference in amounts transferred to borrowers and received from institutions generating the budget impact in Table 3. The amounts in Table 4 assume the Federal Government will recover from institutions some portion of amounts discharged. In the absence of any recovery from institutions, taxpayers would bear the full cost of approved defense to repayment applications. For the primary budget estimate, the annualized costs with no recovery are approximately $498 million at a 3 percent discount rate and $512.5 million at a 7 percent discount rate. This potential increase in costs demonstrates the effect that recoveries from institutions have on the net budget impact of the final defense to repayment regulations.

4.2. Closed School Discharges

In addition to the provisions previously discussed, the final regulations also would make two changes to the closed school discharge process that are expected to have an estimated net budget impact of − $1.2621 billion, of which − $187 million is a modification to past cohorts related to the elimination of the automatic three-year discharge for schools that close on or after July 1, 2020. The combined effect of the elimination of the three-year automatic discharge and the expansion of the eligibility window to 180 days for Direct Loan borrowers is − $1,075 million for cohorts 2020–2029. In the NPRM version, students offered a teach-out opportunity approved by the institution's accrediting agency and State authorizing agency were not eligible for a closed school discharge. In the final regulations, students are eligible to receive a closed school loan discharge unless they transfer their credits, or participate in an approved teach-out plan. Once a borrower chooses to participate in an approved teach-out plan, they are no longer eligible for a closed school loan discharge unless the institution fails to materially meet the requirements of the approved teach-out plan. As with the estimates related to the borrower defense to repayment provisions, the net budget impact estimates for the closed school discharge provisions are developed from the PB2020 budget baseline that accounted for the delayed implementation of the 2016 final regulations and assumed the 2016 final regulations would take effect on July 1, 2019.

As described in the regulation, the standard path to such a discharge will require borrowers to submit an application. The savings from eliminating the three-year automatic closed school discharge provisions offset the costs of expanding the eligibility window to 180 days for cohorts 2020–2029. The precise interaction between the two effects is uncertain as outreach and better information for borrowers about the closed school loan discharge process may increase the rate of borrowers who submit applications. In estimating the effect of the 2016 final regulations, the Department looked at all Direct Loan

borrowers at schools that closed from 2008–2011 to see the percentage of loan volume associated with borrowers that had not received a closed school discharge and had no NSLDS record of title-IV aided enrollment in the three years following their school's closure and found it was approximately double the amount of those who received a discharge. This could be because the students received a teach-out or transferred credits and completed their program without additional title IV aid, or it could be that the students did not apply for the discharge because of a lack of awareness or other reasons. Whatever the reason, in estimating the potential cost of the 3-year automatic discharge provision in the PB2020 baseline, the Department applied this increase to the closed school discharge rate. For these final regulations, we have reversed the increase attributed to the 3-year automatic discharge.

The volume of additional discharges that might result from the expansion of the window is also difficult to predict. The Department analyzed borrowers who were enrolled within 180 days of the closure date for institutions that closed between July 1, 2011 and February 13, 2018 and found that borrowers who withdrew within the 121 to 180-day time frame would increase loan volumes eligible for discharge by approximately nine percent. However, it is possible that some borrowers who complete their programs in that window or the current 120-day window for eligibility would choose to withdraw and pursue a closed school loan discharge instead of completing the program if the school closure is known in advance. The likelihood of this is unclear as it might depend on the relative length of the program, the time the borrower has remaining in the program, and the borrower's perception of the value of the credential versus the burden of starting the program over again as compared to the prospect of debt relief. Further, if the student knows that the school plans to close, it is likely because the school has implemented a teach-out plan, which would negate the borrower's ability to claim a closed school discharge if borrower accepts the teach-out. For these reasons, the Department did not adjust for this strategic withdrawal factor in estimating the impact of the expansion of the eligibility window.

The incentives in the final regulations with respect to teach-outs are similar to the existing regulations for both institutions and borrowers, so the Department has reversed the 65 percent reduction in the baseline closed school discharges estimated in the NPRM, reducing the overall savings estimated for the closed school discharge provision. As is demonstrated by the estimated net savings from the closed school discharge changes, the removal of the three-year automatic discharge provisions is still expected to reduce the anticipated closed school discharge claims significantly more than the expansion of the window to 180 days increases them.

4.3. Other Provisions

The final regulations will also make a number of changes that are not estimated to have a significant net budget impact including changes to the financial responsibility standards and treatment of leases, false certification discharges, guaranty agency collection fees and capitalization, and the calculation of the borrower's subsidized usage period process. The false certification discharge changes update the regulations to reflect current practices. The proposed regulations would also make borrowers who provide a written attestation of high school completion in place of an earned but unavailable high school diploma ineligible for a false certification discharge. In FY2017, false certification discharges totaled approximately $7 million. As before, we do not expect a significant change in false certification discharge claims that would result in a significant budget impact from this change in terms or use of an application that has been available at least ten years in place of a sworn statement. False certification discharges may decrease due to the ineligibility of borrowers who submit a written attestation in place of a high school diploma, but given the low level of false certification discharges in the baseline, even if a large share were eliminated, it would not have a significant net budget impact. Therefore, we do not estimate an increase in false certification discharge claims or their associated discharge value.

Some borrowers may be eligible for additional subsidized loans and no longer be responsible for accrued interest on their subsidized loans as a result of their subsidized usage period being eliminated or recalculated because of a closed school, false certification, unpaid refund, or defense to repayment discharge. As in the 2016 final regulations, we believe the institutions primarily affected by the 150 percent subsidized usage regulation are not those expected to generate many of the applicable discharges, so this reflection of current practice is not expected to have a significant budget impact.

5. Accounting Statement

As required by OMB Circular A–4 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations (see Table 5). This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. The amounts presented in the Accounting Statement are generated by discounting the change in cashflows related to borrower discharges for cohorts 2020 to 2029 from the PB2020 baseline at 7 percent and 3 percent and annualizing them. This is a different calculation than the one used to generate the subsidy cost reflected in the net budget impact, which is focused on summarizing costs at the cohort level. As the life of a cohort is estimated to last 40 years, the discounting does have a significant effect on the impact of the difference in cashflows in the outyears. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits	
	7%	3%
Disclosure to borrowers about use of mandatory pre-dispute arbitration clauses and potential increase in settlements between borrowers and institutions	Not Quantified	
Reduced administrative burden related to processing defense to repayment applications	Not Quantified	

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES—Continued

[In millions]

Category	Benefits	
	7%	3%
Cost reductions associated with paperwork compliance requirements	−$6.01	−$6.02
Category	**Costs**	
Changes in Department's systems to collect relevant information and calculate revised composite score	Not Quantified	
Category	**Transfers**	
	7%	3%
Reduced defense to repayment discharges from the Federal Government to affected borrowers (partially borne by affected institutions, via reimbursements	$−512.5	$−498.0
Reduced reimbursements of borrower defense claims from affected institutions to affected student borrowers, via the Federal government	−153.4	−149.0
Reduced closed school discharges from the Federal Government to affected borrowers	−37.2	−40.6

Previous Accounting Statements by the Department, including for the 2016 final regulations, presented a number that was the average cost for a single cohort. If calculated in that manner, the reduced transfers for defense to repayment from the Federal government to affected borrowers would be $−1,377.0 billion, reimbursements would be reduced $−414.08 million, and closed school discharge transfers would be reduced $−140.61 million at a 7 percent discount rate.

6. Regulatory Alternatives Considered

In response to comments received and the Department's further internal consideration of these final regulations, the Department reviewed and considered various changes to the final regulations detailed in this document. The changes made in response to comments are described in the *Analysis of Comments and Changes* section of this preamble. We summarize below the major proposals that we considered but which we ultimately declined to implement in these regulations.

In particular, the Department extensively reviewed the financial responsibility provisions and related disclosures and arbitration provisions of these final regulations. In developing these final regulations, the Department considered the budgetary impact, administrative burden, and effectiveness of the options it considered.

TABLE 6—COMPARISON OF ALTERNATIVES

Topic	Baseline	Alternatives	Proposal	Final
Borrower Defense claims accepted.	Affirmative and defensive	Defensive only, Affirmative and defensive, Affirmative and defensive with a limitation period.	Defensive only	Claims from any borrower within three years after leaving the institution, regardless of the borrower's repayment status, with some extension for those who are involved in arbitration hearings.
Party that adjudicates borrower defense claims.	Department	Department, State court or arbiter.	Department	Department.
Standard for borrower defense claims.	Federal Standard	State laws, Federal standard.	Federal standard	Federal standard.
Borrower defense application process.	Application	Submit judgment from state court or similar using application, Submit sworn attestation or application, select borrower defense in response to wage garnishment or similar actions, and Application.	Select borrower defense in response to wage garnishment or similar actions.	Application.
Loans associated with BD claims.	Forbearance during adjudication and interest accrues.	Forbearance during adjudication process and interest accrues, forbearance not necessary.	Forbearance not necessary.	Forbearance during adjudication and interest accrues.
Closed school discharge eligibility window.	120 days	120, 150, and 180 days	180 days	180 days.
Closed school discharge exclusions.	Borrower completed teach-out or transferred credits.	Borrower completed teach-out or transferred credits; School offered a teach-out plan.	School offered a teach-out plan.	Borrower completed teach-out or transferred credits.

TABLE 6—COMPARISON OF ALTERNATIVES—Continued

Topic	Baseline	Alternatives	Proposal	Final
Composite score calculation and timeline.	No FASB updates	No changes until full negotiation of composite score; no grace period or phase-in for FASB updates; higher of current or FASB-updated score forever; and higher of current or FASB-updated score for 6 years, then FASB-updated score.	Higher of current or FASB-updated score forever.	Current leases grandfathered; FASB applies on renewal.
Financial responsibility triggers.	Reporting that automatically results in surety request.	New reporting that may result in surety request, new reporting that automatically results in surety request.	New reporting that may result in surety request.	New reporting that may result in surety request.
Notification of mandatory arbitration and class action waivers.	Prohibits mandatory arbitration clauses and class action waivers.	On website, during entrance and exit counseling, and annually by email to students; no required notification beyond the enrollment agreement; notification of students on website and during entrance counseling.	Notification of students on website and entrance counseling.	Notification of students on website and during entrance counseling.

6.2. Summary of Final Regulations

The final regulations amend the baseline regulations to update composite score calculations to comply with new FASB standards, but provide a grandfathering period for existing leases; require institutions to disclose fewer adverse events to the Department; require notification regarding mandatory pre-dispute arbitration clauses or agreements or class-action prohibitions; expand the closed school discharge eligibility period; modify the conditions under which a Direct Loan borrower may qualify for false certification and closed school discharges; eliminate the automatic closed school discharge for schools that closed on or after July 1, 2020; revise the Federal standard for borrower defense claims for loans disbursed on or after July 1, 2020; eliminate the borrower defense group application provision for loans disbursed on or after July 1, 2020; and request evidence from institutions prior to completing adjudication of any borrower defense claims. Finally, there are changes to the regulations collection costs charged by guaranty agencies.

6.3. Discussion of Alternatives

The Department considered a broad range of provisions relative to borrower defenses to repayment. One option would require borrowers to submit a judgment from a Federal or State court or arbitration panel to qualify for a defense to repayment discharge, which would not include a process for the Department to adjudicate claims because claimants would already have obtained a decision from a court or arbitrator at the State level. This alternative would place an increased burden on borrowers if they decide to hire a lawyer in order to present their claims to a State court or incur costs associated with an arbitration proceeding. Moreover, because consumer protection laws vary by State, a borrower filing a claim in one State may be subject to different criteria compared to a borrower filing a defense to repayment claim in another State. It may also be unclear as to which State serves as the relevant jurisdiction for a given borrower. A second option would be to rescind the 2016 regulations on borrower defenses and go back to the 1995 regulations. In this alternative the Department would accept only defensive borrower defense claims to repayment applications or attestations and adjudicate them, applying a State law standard. Under this alternative, borrowers could elect to have loans placed in forbearance while their claims are adjudicated.

The Department considered keeping the closed school discharge eligibility window at 120 days or expanding it to 150 or 180 days. Further, one option excludes students whose institutions offer them a teach-out plan from such a discharge, while another option excludes borrowers who complete a teach-out or transfer credits. One alternative considered for the false certification discharge provisions included rescission of the technical changes in the 2016 final regulations.

Relative to pre-dispute arbitration and class-action waiver policies, alternatives included requiring an institution to notify current and potential students on its website, at entrance and exit counselling for all title IV borrowers, and annually to all enrolled students by email; and requiring no notification beyond the enrollment agreement.

Lastly, alternatives were considered related to financial responsibility. One option would implement revisions to FASB standards in the calculation of an institution's composite score without a transition period and would prevent an institution from appealing the composite score calculation while others provided for a transition period or made no changes at all. Whether the Department would require (automatically, discretionarily, or at all) that the institution automatically provide a surety in the event that a financial responsibility risk event occurs was considered.

7. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act (5 U.S.C. 603(a)) allows an agency to certify a rule if the rulemaking does not have a significant economic impact on a substantial number of small entities. This certification was revised from the NPRM

based upon public comment to improve its clarity.

Comments: The Small Business Association Office of Advocacy expressed concern that the Department has certified that the proposed rule will not have a significant economic impact on a substantial number of small entities without providing a sufficient factual basis for the certification as required by the Regulatory Flexibility Act. The commenter stated that, at a minimum, the factual basis should include: (1) Identification of the regulated small entities based on the North American Industry Classification System; (2) the estimated number of regulated small entities; (3) a description of the economic impact of the rule on small entities; and (4) an explanation of why either the number of small entities is not substantial or the economic impact is not significant under the RFA. They noted that the Department's estimated costs are assumed to be the same for large and small entities, which the commenter objected to on the basis that small institutions have reduced economies of scale. The commenter objected to the Department's statement that potential economic impacts would be minimal and entirely beneficial to small institutions, and claimed the Department lacked data to support the statement. The commenter suggested that the Department should analyze significant alternatives, including: An early claim resolution process to minimize the potential cost of borrower defense claims; allowing borrowers to bring affirmative claims against institutions up to three years after the date of graduation; and applying a clear and convincing evidentiary standard.

The commenter also points out that, currently, the Department requires institutions to maintain student data for three years after a student's graduation, but if a borrower may bring a claim at any point in repayment, schools must maintain student data for decades. Nevertheless, the record contains no information on how high this cost could be. The commenter expressed concern that the need to maintain student data will impose significant liability on small institutions for cybersecurity and student privacy. The commenter stated that these costs to smaller institutions should be analyzed, and recommended that the Department publish for public comment either a supplemental certification with a valid factual basis or an Initial Regulatory Flexibility Analysis (IRFA) before proceeding with this rulemaking.

Discussion: We disagree that the Department did not provide sufficient factual basis for the Regulatory Flexibility Act certification. Specifically, the Department proposed in the **Federal Register** and requested comment on a definition of small institutions that it is capable of computing using its own data (see: SBA Office of Advocacy, August 2017, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* p. 15, available at: *www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf*). We have revised our certification to increase clarity and to account for changes in the final regulations, including a three-year period of limitations on borrower defense to repayment applications, including affirmative claims, from the date the borrower is no longer enrolled at the institution. Finally, the Department defines significant economic impact as a burden or cost to small institutions, and its estimates build upon those from the *Net Budget Impacts* and *Paperwork Reduction Act of 1995* sections. As compared to the PB2020 baseline that assumed implementation of the 2016 final rule, the impacts of the borrower defense changes are benefits or reduced recoupments, and zero dollars are estimated as impacts of closed school and false certification discharges. Compliance costs for changes to financial responsibility reporting of risk events, disclosure of forced arbitration clauses is minimal. Specifically, the annual costs per entity were estimated at $178 to $266 and $489 the first year with $133 in subsequent years, respectively. Further, the two latter costs only occur at institutions that either have documented risks to their financial responsibility or that are proactively choosing to require mandatory pre-dispute arbitration agreements or class action waivers. While economies of scale may exist for larger institutions, the Department does not have information on the cost differential between types of institutions. The Department does not assume different costs for small institutions, especially for data storage for which additional options are being developed on a regular basis.

As to proposed alternatives, the Department notes that claim resolution can occur between borrowers and institutions freely without the Department's involvement, via mediation or arbitration, or through other avenues if the parties so choose. These final regulations permit claims within a three-year limitation period with limited exceptions for borrowers engage in proceedings that would involve the institution and therefore indefinite records retention will not be required. Additionally, for reasons discussed at greater length above, the final rule adopts a preponderance of the evidence standard.

Changes: Added information about percent of small proprietary institutions under $7 million threshold previously used by the Department for informational purposes.

This rule directly affects all public nonprofit and proprietary institutions participating in title IV programs relative to the proposed financial responsibility provisions; it also affects a small proportion of institutions participating in title IV programs in each sector relative to the loan discharge requirements. As found in the *Paperwork Reduction Act of 1995* section, there are currently 5,868 institutions participating in title IV programs, of which 1,799 are private nonprofit and 1,896 are proprietary. Table 6 presents an estimated number and percent of small institutions using the Department's enrollment based definition for small institution. This definition applies equally across control categories and defines a small institution as one with under 500 FTE for 2-yr or less institutions, and 1,000 FTE for 4-year institutions.

TABLE 6—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total		3,996	6,951	57

In previous regulations, the Department used the small business definitions based on tax status that defined ''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. Compared to those definitions of small institutions which resulted in the Department considering all private nonprofit institutions as small and no public institutions as small, we think the enrollment-based approach establishes a reasonable framework applicable to all postsecondary institutions. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY2017 IPEDs finance data for proprietary institutions, 50 percent of four-year and 90 percent of two-year or less proprietary institutions would be considered small. The enrollment-based definition captures a similar share of proprietary institutions will having the benefit of allowing comparison to other types of institutions on a consistent basis.

Table 7 summarizes the summarizes number of institutions affected by these final regulations.

TABLE 7—ESTIMATED COUNT OF SMALL INSTITUTIONS AFFECTED BY THE FINAL REGULATIONS

	Small institutions affected	As % of small institutions
Borrower Defense	355	9
Closed School	57	1
False Certification	183	5
Composite Score	2,565	64
Composite Score Recalculation:		
Risk Event Reporting	641	16
Mandatory	417	10
Arbitration Disclosure	806	20

The Department has determined that the negative economic impact on small entities affected by the regulations will not be significant. As further explained in the *Net Budget Impacts* section, the Department estimates a reduction in recoupment due to borrower defense provisions and zero change in recoupment for closed school and false certification provisions. As further explained in the *Paperwork Reduction Act of 1995* section, compliance costs associated with the financial responsibility reporting and disclosure requirement changes are minimal and occur only at institutions that either have documented risks to their financial responsibility or that require pre-dispute mandatory arbitration agreements or class-action waivers. Table 8 captures estimated compliance costs per entity and across small institutions.

TABLE 8—COMPLIANCE COSTS FOR SMALL INSTITUTIONS

Compliance area	Small institutions affected	Cost range per institution		Estimated overall cost range	
Financial responsibility reporting	417	$178	$266	$74,226	$110,922
Mandatory arbitration disclosure	806	133	* 489	107,198	394,134

Accordingly, the Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

8. 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 668.41, 668.171, appendices A & B to part 668, subpart L, and §§ 685.206, 685.214, 685.215, and 685.304 of these final regulations contain information collection requirements. Additionally, burden assessed in §§ 668.14, 668.41, 668.172, 674.33, 682.402, and 685.300 from the 2016 final regulations and 2018 NPRM is being removed based on these final regulations. Under the PRA, the Department has or will at the required time submit 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 these final regulations, we have displayed the control numbers assigned by OMB to any information collection requirements proposed in the NPRM and adopted in the final regulations.

Section 668.14 Program Participation Agreement

Requirement: In the 2016 final regulations, § 668.14(b)(32) required that an institution, as part of the program participation agreement, provide all enrolled students with a closed school discharge application and a written disclosure describing the benefits and consequences of a closed school discharge after the Department initiated any action to terminate the participation of the school or any occurrence of events specified in § 668.14(b)(31) requiring the institution submit a teach out plan. The Department has since determined that it is the Department's, not the school's, responsibility to provide this information to students, and we are rescinding this regulatory requirement.

Burden Calculation: The Department removes the associated burden of 1,953 hours under the OMB Control Number 1845–0022 and will remove the hours on or after the effective date of the regulations.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER: 1845–0022

Institution type	Respondent	Responses	Burden hours	Cost $36.55 per institution from 2016 Final Rule
Private	−8	−1,912	−340	$−12,427
Proprietary	−38	−9,082	−1,613	−58,955
Total	−46	−10,994	−1,953	−71,382

Section 668.41 Reporting and Disclosure of Information

Requirements: Under the final changes in § 668.41(h), an institution that uses pre-dispute arbitration agreements and/or class action waivers will be required to disclose that information in a written plain language disclosure available to enrolled and prospective students, and the public. The regulatory language also prescribes the font size and location of the information on its website on the same page where admissions information is made available as well as in the admissions section of the institution's catalog.

This replaces the previous ''Loan repayment warning for proprietary institutions'' regulatory text from the 2016 final regulations.

Burden Calculation: There will be burden on schools to make additional disclosures of the institution's use of a pre-dispute arbitration agreement and/or class action waiver to students, prospective students, and the public under this final regulation. Based on informal conversations held with proprietary institutions during negotiated rulemaking and conferences, the Department believes such agreements are currently used primarily by proprietary institutions. Of the 1,888 proprietary institutions participating in the title IV, HEA programs, we estimate that 50 percent or 944 will use a pre-dispute arbitration agreement and/or class action waiver and will provide the required information electronically. We anticipate that it will take an average of 5 hours to develop, program, and post the required information to the websites where admission and tuition and fees information is made available. The estimated burden would be 4,720 hours (944 × 5 hours) under OMB Control Number 1845–0004.

STUDENT ASSISTANCE GENERAL PROVISIONS—STUDENT RIGHT TO KNOW (SRK)—OMB CONTROL NUMBER: 1845–0004

Institution type	Respondent	Responses	Burden hours	Cost $44.41 per institution from 2018 NPRM
Proprietary	944	944	4,720	$209,615
Total	944	944	4,720	209,615

Due to these final regulatory text changes in 668.41(h), the previous burden assessed under the 2016 final regulations will be removed upon the effective date of these regulations. 5,346 hours will be deleted from OMB Control Number 1845–0004 on or after the effective date of the regulations.

STUDENT ASSISTANCE GENERAL PROVISIONS—STUDENT RIGHT TO KNOW (SRK)—OMB CONTROL NUMBER: 1845–0004

Institution type	Respondent	Responses	Burden hours	Cost $36.55 per institution from 2016 Final Rule
Proprietary	−972	−1,949	−5,346	$−195,396
Total	−972	−1,949	−5,346	−195,396

Section 668.171 General

Requirements: Under the final § 668.171(f), in accordance with procedures to be established by the Secretary, an institution will notify the Secretary of any action or event described in the specified number of days after the action or event occurred. In the notice to the Secretary or in the institution's preliminary response, the institution may show that certain of the actions or events are not material or that the actions or events are resolved.

Burden Calculation: There will be burden on institutions to provide the notice to the Secretary when one of the actions or events occurs. We estimate that an institution will take two hours per action to prepare the appropriate notice and to provide it to the Secretary. We estimate that 180 private institutions may have two events annually to report for a total burden of 720 hours (180 institutions × 2 events × 2 hours). We estimate that 379 proprietary institutions may have three events annually to report for a total burden of 2,274 hours (379 institutions × 3 events × 2 hours). This total burden of 2,994 hours will be assessed under OMB Control Number 1845–0022.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER: 1845–0022

Institution type	Respondent	Responses	Burden hours	Cost $44.41 per institution from 2018 NPRM
Private	180	360	720	$31,975
Proprietary	379	1,137	2,274	100,988
Total	559	1,497	2,994	132,963

Section 668.172 Financial Ratios

Requirements: The proposed changes to § 668.172(d) from the NPRM have been deleted from these final regulations.

Burden Calculation: The proposed burden is being deleted from the Information Collection Request that was filed with the NPRM. There is no longer an estimated increase in burden of 232 hours based on changes to § 668.172 under the OMB Control Number 1845–0022.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER: 1845–0022

Institution type	Respondent	Responses	Burden hours	Cost $44.41 per institution from 2018 NPRM
Private	−450	−450	−113	$−5,018
Proprietary	−474	−474	−119	−5,285
Total	−924	−924	−232	−10,303

Appendix A and B for Section 668—Subpart L—Financial Responsibility

Requirements: Under final Section 2 for appendix A and B, proprietary and private institutions will be required to submit a Supplemental Schedule as part of their audited financial statements. With the update from the FASB, some elements needed to calculate the composite score will no longer be readily available in the audited financial statements, particularly for private institutions. With the updates to the Supplemental Schedule to reference the financial statements, this issue will be addressed in a convenient and transparent manner for both the schools and the Department by showing how the composite score is calculated.

Burden Calculation: There will be burden on institutions to provide the Supplemental Schedule to the Department. During the negotiations, the members of the negotiated rulemaking subcommittee indicated that they believed that as the information will be readily available upon completion of the required audit the burden would be minimal. We estimate that it will take each proprietary and private institution one hour to prepare the Supplemental Schedule and have it made available for posting along with the annual audit. We estimate that 1,799 private schools will require 1 hour of burden to prepare the Supplemental Schedule and have it made available for posting along with the annual audit for a total burden of 1,799 hours (1,799

institutions × 1 hour). We estimate that 1,888 proprietary schools will require 1 hour of burden to prepare the Supplemental Schedule and have it made available for posting along with the annual audit for a total burden of 1,888 hours (1,888 institutions × 1 hour). This total burden of 3,695 hours will be assessed under OMB Control Number 1845–0022.

The total additional burden under OMB Control Number 1845–0022 will be 6,921 hours.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER: 1845–0022

Institution type	Respondent	Responses	Burden hours	Cost $44.41 per institution from 2018 NPRM
Private	1,799	1,799	1,799	$79,894
Proprietary	1,896	1,896	1,896	84,201
Total	3,695	3,695	3,695	164,095

Section 682.402 Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

Requirements: The proposed changes to § 682.402 regarding the requirement that a guaranty agency provide information to a borrower about how to request a review of the guaranty agency's denial of a closed school discharge from the Secretary from the NPRM are not included in the final regulations.

Burden Calculation: The proposed burden is being deleted from the Information Collection Request that was filed with the NPRM. There is no longer an estimated increase in burden of 410 hours based on the changes to § 682.402(d)(6)(ii)(F) under OMB Control Number 1845–0020.

FEDERAL FAMILY EDUCATION LOAN PROGRAM REGULATIONS—OMB CONTROL NUMBER: 1845–0020

Institution type guaranty agency	Respondent	Responses	Burden hours	Cost $44.41 per institution from 2018 NPRM
Private	−11	−89	−188	$−8,349
Public	−13	−105	−222	−9,859
Total	−24	−194	−410	−18,208

Section 685.206 Borrower Responsibilities and Defenses

Requirements: Under final § 685.206(e), a defense to repayment discharge claim on a Direct Loan disbursed after July 1, 2020, will be evaluated under the Federal standard using an application approved by the Secretary. Under final § 685.206(e), a defense to repayment must be submitted within three years from the date the student is no longer enrolled at the institution.

Burden Calculation: We believe that the burden will be associated with the new form that the borrower receives that accompanies the notice of action from the Department. The new form will be completed and made available for comment through a full public clearance package before being made available for use.

Section 685.214 Closed School Discharge

Requirements: Under final § 685.214(c), the number of days that a borrower must have withdrawn from a closed school to qualify for a closed school discharge will be extended from 120 days to 180 days, for loans first disbursed on or after July 1, 2020. Additionally, if a closed school provided a borrower an opportunity to complete his or her academic program through a teach-out plan approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, the borrower will not qualify for a closed school discharge. The final regulation further provides that the Secretary may extend that 180 days further if there is a determination that exceptional circumstances justify an extension.

Burden Calculation: The extension from 120 days to 180 days for withdrawal prior to the closing of the school will require an update to the current closed school discharge application form with OMB Control Number 1845–0058. We do not believe that the language update will change the amount of time currently assessed for the borrower to complete the form from those which has already been approved. The form update will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Section 685.215 Discharge for False Certification of Student Eligibility or Unauthorized Payment

Requirements: Under final § 685.215, the application requirements for false certification discharges will be amended to reflect the current practice of requiring a borrower to apply for the discharge using a Federal application form instead of a sworn statement. The final regulations also will remove the term ''ability to benefit'' to reflect changes to the HEA. Under the final regulatory changes, a Direct Loan borrower will not qualify for a false certification discharge based on not having a high school diploma in cases when the borrower did not obtain an official transcript or diploma from the high school, and the borrower provided an attestation to the institution that the borrower was a high school graduate.

Burden Calculation: The clarification to require the submission of a Federal application to receive a discharge and updating of the form to remove ''ability to benefit'' language will require an update to the current false certification application form with OMB Control Number 1845–0058. We do not believe that the language update will change the amount of time currently assessed for the borrower to complete the form, nor an increase in the number of borrowers who may qualify, to complete the form from those that have already been approved. The form update will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Section 685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program

Requirements: Under final § 685.300, paragraphs (d) through (i) finalized in the 2016 final regulations covering borrower defense claims in an internal dispute process, class action bans, pre-dispute arbitration agreements, submission of arbitral records, submission of judicial records, and definitions are removed from the regulations.

Burden Calculation: Due to these final regulatory text changes, the previous burden assessed under paragraphs (e) through (h) in the 2016 final regulation will be removed upon the effective date of these regulations. 179,362 hours will be deleted from OMB Control Number 1845–0143 on or after the effective date of these regulations.

AGREEMENTS BETWEEN AND ELIGIBLE SCHOOL AND THE SECRETARY TO PARTICIPATE IN THE DIRECT LOAN PROGRAM—OMB CONTROL NUMBER: 1845–0143

Institution type	Respondent	Responses	Burden hours	Cost $36.55 per institution from 2016 Final rule
Proprietary	−1,959	−1,010,519	−179,362	$−6,555,681
Total	−1,959	−1,010,519	−179,362	−6,555,681

Section 685.304 Counseling Borrowers

Requirements: Under final § 685.304 there are changes to the requirements to counsel Federal student loan borrowers prior to making the first disbursement of a Federal student loan (entrance counseling). Institutions that use pre-dispute arbitration agreements and/or class action waivers will be required to include in mandatory entrance counseling plain-language information about the institution's process for initiating arbitration and dispute resolution, including who the borrower may contact regarding a dispute related to educational services for which the loan was made. Institutions that require borrowers to accept a pre-dispute arbitration agreement and/or class action waiver will be required to provide information in writing to the student borrower about the plain language meaning of the agreement, when it would apply, how to enter into the process, and who to contact with questions.

Burden Calculation: We believe there will be burden on the institutions to create any institution specific pre-dispute arbitration agreement and/or class action waivers and provide that information in addition to complying with the current entrance counseling requirements. Of the 1,888 participating proprietary institutions, we estimate that 50 percent or 944 institutions will need to create additional entrance counseling information regarding the use of the pre-dispute arbitration agreement and/or class action waivers to provide to their student borrowers. We anticipate that it will take an average of 3 hours to adapt the information provided in § 668.41 as a part of the required entrance counseling, to identify staff who will be able to answer additional questions, and to obtain evidence indicating the provision of the material for a total of 2,832 hours (944 × 3 hours).

Additionally, we believe that there will be minimum additional burden for borrowers to review the information when completing the required entrance counseling and provide the required evidence that the borrowers received the information. In calendar year 2017, 684,813 Direct Loan borrower completed entrance counseling using the Department's on-line entrance counseling. Assuming the same 50 percent of borrowers attend a school that uses pre-dispute arbitration agreements and/or class action waivers will require five minutes to review the material and provide evidence of receipt of the information, we estimate a total of 27,393 hours of additional burden (342,407 borrowers time .08 (5 minutes) = 27,393 hours). There will be a total increase in burden of 30,225 hours under OMB Control Number 1845–0021.

WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM (DL) REGULATIONS—OMB CONTROL NUMBER: 1845–0021

Institution type	Respondent	Responses	Burden hours	Cost $44.41 per institution; $16.30 per individual from 2018 NPRM
Proprietary	944	944	2,832	$125,769
Individual	342,407	342,407	27,393	446,506
Total	343,351	343,351	30,225	572,275

Consistent with the discussions above, the following chart describes the sections of the final 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 cost of the burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics data, available at *https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm* is $1,078,948 for all positive entries as shown in the chart below. With the deletion of certain regulations, there will be a corresponding savings of $ − 6,850,970 upon the effective date of these regulations. This cost is based on an estimated hourly rate of $44.41 for institutions, lenders, and guaranty agencies and $16.30 for students unless otherwise noted in the table.

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
§ 668.14	In the 2016 final regulations, § 668.14(b)(32) required that an institution, as part of the program participation agreement, provide all enrolled students with a closed school discharge application and a written disclosure describing the benefits and consequences of a closed school discharge under certain circumstance. The Department has since determined that it is the Department's, not the school's, responsibility to provide this information to students, and we are rescinding this regulatory requirement.	1845–0022; − 1,953. The Department will remove the hours on or after the effective date of the regulations.	$ − 71,382. This amount was based on the 2016 cost of 36.55/hr for institutions.
§ 668.41	Under the final regulatory language in § 668.41(h) institutions that use pre-dispute arbitration agreements and/or class action waivers will be required to disclose that information in a plain language disclosure available to enrolled and prospective students, and the public on its website where admissions and tuition and fees information is made available.	1845–0004; +4,720 hours.	$209,615.
	Additionally due to the changes in the final regulatory text for § 668.41(h), the burden of 5,346 hour previously assessed in the 2016 final regulations will be deleted from this information collection upon the effective date of this regulatory package.	The Department will remove the hours on or after the effective date of the regulations. − 5,346 hours.	$ − 195,396. This amount was based on the 2016 cost of 36.55/hr for institutions.
§ 668.171	Under the final regulatory language in § 668.171(f) in accordance with procedures to be established by the Secretary, an institution will notify the Secretary of any action or event described in the specified number of days after the action or event occurs. In the notice to the Secretary or in the institution's response, the institution may show that certain of the actions or events are not material or that the actions or events are resolved.	1845–0022; +2,994 hours.	$132,964.
§ 668.172	The proposed changes to § 668.172(d) from the NPRM have been deleted from the Final rule.	1845–0022; − 232 hours.	$ − 10,303.
Appendix A & B of 668 subpart L.	Under final Section 2 for appendix A and B, proprietary and private institutions will be required to submit a Supplemental Schedule as part of their audited financial statements. With the update from the Financial Standards Accounting Board (FASB) some elements needed to calculate the composite score will no longer be readily available in the audited financial statements, particularly for private institutions. With the updates to the Supplemental Schedule to reference the financial statements, this issue will be addressed in a convenient and transparent manner for both the institutions and the Department by showing how the composite score is calculated.	1845–0022; +3,695 hours.	$164,095.
§ 682.402	The final regulations no longer incorporate the proposed change requiring guaranty agencies to provide information to a borrower about how to request a review of an agency's denial of a closed school discharge from the Secretary. This removes the proposed burden.	1845–0020; − 410 hours.	− $18,208.
§ 685.206	Under final § 685.206(e), a borrower defense claim related to a direct loan disbursed after July 1, 2020 will be evaluated under the Federal standard. Under final § 685.206(e), a borrower defense must be submitted within three years from the date the borrower is no longer enrolled at the institution.	A new collection will be filed closer to the implementation of this requirement; +0 hours.	$0.
§ 685.214	Under the final regulations, the number of days that a borrower may have withdrawn from a closed institution to qualify for a closed school discharge will be extended from 120 days to 180 days for loans first disbursed after July 1, 2020. The final language further allows that the Secretary may extend that 180 days further if there is a determination that exceptional circumstances justify an extension.	1845–0058; +0 hours.	$0.

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
§ 685.215	Under the final regulatory language in § 685.215, the application requirements for false certification discharges are amended to reflect the current practice of requiring a borrower to apply for the discharge using a completed application form instead of a sworn statement. The final regulatory language removed the use of term ''ability to benefit'' to bring the definition in line with the current HEA language. Under final regulatory language, a Direct Loan borrower will not qualify for a false certification discharge based on not having a high school diploma provide that in cases when they did not obtain an official transcript or diploma from the high school, and the borrower provided an attestation to the institution that the borrower was a high school graduate. The attestation will have to be provided under penalty of perjury.	1845–0058; +0 hours.	$0.
§ 685.300	Under final § 685.300 previous paragraphs (d) through (i) which covered borrower defense claims in an internal dispute process, class action bans, pre-dispute arbitration agreements, submission of arbitral records, submission of judicial records, and definitions are removed from regulation.	1845–0143; −179,362. The Department will remove the hours on or after the effective date of the regulations.	$−6,555,681. This amount was based on the 2016 cost of 36.55/hr for institutions.
§ 685.304	Under final § 685.304 there are changes to the requirements to counsel Federal student loan borrowers prior to making the first disbursement of a Federal student loan. Institutions that use pre-dispute arbitration agreements and/or class action waivers include in the required entrance counseling information on the institution's internal dispute resolution process and who the borrower may contact regarding a dispute related to educational services for which the loan was made. Institutions that require a pre-dispute arbitration agreement and/or class action waiver will be required to review with the student borrower the agreement and when it will apply, how to enter into the process and who to contact with questions.	1845–0021; +30,225 hours (2,832 institutions +27,393 individual hours).	Total: $572,275. Inst. 125,769; Indiv. 446,506.

Collections of Information

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations as of the effective date of the regulations are as follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0004	23,390	−626
1845–0020	8,249,520	−410
1845–0021	739,746	+30,225
1845–0022	2,286,015	+4,504
1845–0143	0	−179,362
Total	11,298,671	−145,669

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List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Incorporation by reference, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

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: September 3, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends 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 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

§ 668.14 [Amended]

■ 2. Section 668.14 is amended:

■ a. In paragraph (b)(30)(ii)(C), by adding the word ''and'' after ''by the institution;'';

■ b. In paragraph (b)(31)(v), by removing ''; and'' and adding a period in its place;

■ c. Removing paragraph (b)(32); and

■ d. Removing the parenthetical authority citation at the end of the section.

■ 3. Section 668.41 is amended:

■ a. In paragraph (a), in the definition of ''Undergraduate students,'' by adding the words ''at or'' before ''below'', and adding the word ''level'' after ''baccalaureate'';

■ b. In paragraph (c)(2) introductory text, by removing ''or (g)'' and adding in its place ''(g), or (h)'';

■ c. By revising paragraph (h); and

■ d. By removing paragraph (i) and the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 668.41 Reporting and disclosure of information.

* * * * *

(h) *Enrolled students, prospective students, and the public—disclosure of an institution's use of pre-dispute arbitration agreements and/or class action waivers as a condition of enrollment for students receiving title IV Federal student aid.* (1)(i) An institution of higher education that requires students receiving title IV Federal student aid to accept or agree to a pre-dispute arbitration agreement and/or a class action waiver as a condition of enrollment must make available to enrolled students, prospective students, and the public, a written (electronic) plain language disclosure of those conditions of enrollment. This plain language disclosure also must state that: The school cannot require the borrower to participate in arbitration or any internal dispute resolution process offered by the institution prior to filing a borrower defense to repayment application with the Department pursuant to § 685.206(e); the school cannot, in any way, require students to limit, relinquish, or waive their ability to pursue filing a borrower defense claim, pursuant to § 685.206(e) at any time; and any arbitration, required by a pre-dispute arbitration agreement, tolls the limitations period for filing a borrower defense to repayment application pursuant to § 685.206(e)(6)(ii).

(ii) All statements in the plain language disclosure must be in 12-point font on the institution's admissions information web page and in the admissions section of the institution's catalogue. The institution may not rely solely on an intranet website for the purpose of providing this notice to prospective students or the public.

(2) For the purposes of this paragraph (h), the following definitions apply:

(i) *Class action* means a lawsuit or an arbitration proceeding in which one or more parties seeks class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23.

(ii) *Class action waiver* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student that relates to the making of a Direct Loan or the provision of educational services for which the student received title IV funding and prevents an individual from filing or participating in a class action that pertains to those services.

(iii) *Pre-dispute arbitration agreement* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student requiring arbitration of any future dispute between the parties relating to the making of a Direct Loan or provision of educational services for which the student received title IV funding.

* * * * *

■ 4. Section 668.91 is amended by revising paragraph (a)(3) and removing the parenthetical authority citation.

The revisions read as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation or servicer's eligibility is warranted;

(iii) In an action brought against an institution or third-party servicer that involves its failure to provide a letter of credit, or other financial protection under § 668.15 or § 668.171(c) or (d), the hearing official finds that the amount of the letter of credit or other financial protection established by the Secretary under § 668.175 is appropriate, unless the institution demonstrates that the amount was not warranted because—

(A) For financial protection demanded based on events or conditions described in § 668.171(c) or (d), the events or conditions no longer exist, have been resolved, or the institution demonstrates that it has insurance that will cover all potential debts and liabilities that arise from the triggering event or condition. The institution can demonstrate it has insurance that covers risk by presenting the Department with a copy of the insurance policy that makes clear the institution's coverage;

(B) For financial protection demanded based on the grounds identified in § 668.171(d), the action or event does not and will not have a material adverse effect on the financial condition, business, or results of operations of the institution;

(C) The institution has proffered alternative financial protection that provides students and the Department adequate protection against losses resulting from the risks identified by the Secretary. Adequate protection may consist of one or more of the following—

(*1*) An agreement with the Secretary that a portion of the funds due to the institution under a reimbursement or heightened cash monitoring funding arrangement will be temporarily withheld in such amounts as will meet, no later than the end of a six to 12 month period, the amount of the required financial protection demanded; or

(*2*) Other form of financial protection specified by the Secretary in a notice published in the **Federal Register**.

(iv) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(3), if the hearing official finds that the

institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(v)(A) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.15(d)(4) have been met; and

(B) In a termination or limitation action against an institution based on the grounds that the institution is not financially responsible—

(*1*) Upon proof of the conditions in § 668.174(a), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all the conditions in § 668.175(h)(2) have been met; and

(*2*) Upon proof of the conditions in § 668.174(b)(1), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.174(b)(2) or § 668.175(h)(2) have been met.

* * * * *

■ 5. Section 668.171 is revised to read as follows:

§ 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Meet all of its financial obligations; and

(3) Provide the administrative resources necessary to comply with title IV, HEA program requirements.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c), (d), and (h) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under § 668.173;

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if—

(i) It fails to make refunds under its refund policy or return title IV, HEA program funds for which it is responsible under § 668.22;

(ii) It fails to make repayments to the Secretary for any debt or liability arising from the institution's participation in the title IV, HEA programs; or

(iii) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or an action or event that the Secretary determines is likely to have a material adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

(4) The institution or persons affiliated with the institution are not subject to a condition of past performance under § 668.174(a) or (b).

(c) *Mandatory triggering events.* An institution is not able to meet its financial or administrative obligations under paragraph (b)(3)(iii) of this section if—

(1) After the end of the fiscal year for which the Secretary has most recently calculated an institution's composite score, one or more of the following occurs:

(i)(A) The institution incurs a liability from a settlement, final judgment, or final determination arising from an administrative or judicial action or proceeding initiated by a Federal or State entity. A determination arising from an administrative action or proceeding initiated by a Federal or State entity means the determination was made only after an institution had notice and an opportunity to submit its position before a hearing official. A final determination arising from an administrative action or proceeding initiated by a Federal entity includes a final determination arising from any administrative action or proceeding initiated by the Secretary. For purposes of this section, the liability is the amount stated in the final judgment or final determination. A judgment or determination becomes final when the institution does not appeal or when the judgment or determination is not subject to further appeal; or

(B) For a proprietary institution whose composite score is less than 1.5, there is a withdrawal of owner's equity from the institution by any means (*e.g.,* a capital distribution that is the equivalent of wages in a sole proprietorship or partnership, a distribution of dividends or return of capital, or a related party receivable), unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; and

(ii) As a result of that liability or withdrawal, the institution's recalculated composite score is less than 1.0, as determined by the Secretary under paragraph (e) of this section.

(2) For a publicly traded institution—

(i) The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or

(ii) The national securities exchange on which the institution's securities are traded notifies the institution that it is not in compliance with the exchange's listing requirements and, as a result, the institution's securities are delisted, either voluntarily or involuntarily, pursuant to the rules of the relevant national securities exchange.

(iii) The SEC is not in timely receipt of a required report and did not issue an extension to file the report.

(3) For the period described in (c)(1) of this section, when the institution is subject to two or more discretionary triggering events, as defined in paragraph (d) of this section, those events become mandatory triggering events, unless a triggering event is resolved before any subsequent event(s) occurs.

(d) *Discretionary triggering events.* The Secretary may determine that an institution is not able to meet its financial or administrative obligations under paragraph (b)(3)(iii) of this section if any of the following events is likely to have a material adverse effect on the financial condition of the institution—

(1) The accrediting agency for the institution issued an order, such as a show cause order or similar action, that, if not satisfied, could result in the withdrawal, revocation or suspension of institutional accreditation for failing to meet one or more of the agency's standards;

(2)(i) The institution violated a provision or requirement in a security or loan agreement with a creditor; and

(ii) As provided under the terms of that security or loan agreement, a monetary or nonmonetary default or delinquency event occurs, or other events occur, that trigger or enable the creditor to require or impose on the

institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

(3) The institution's State licensing or authorizing agency notified the institution that it has violated a State licensing or authorizing agency requirement and that the agency intends to withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement;

(4) For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c);

(5) As calculated by the Secretary, the institution has high annual dropout rates; or

(6) The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless—

(i) The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and

(ii) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both of those years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(e) *Recalculating the composite score.* The Secretary recalculates an institution's most recent composite score by recognizing the actual amount of the liability, or cumulative liabilities, incurred by an institution under paragraph (c)(1)(i)(A) of this section as an expense or accounting for the actual withdrawal, or cumulative withdrawals, of owner's equity under paragraph (c)(1)(i)(B) of this section as a reduction in equity, and accounts for that expense or withdrawal by—

(1) For liabilities incurred by a proprietary institution—

(i) For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount;

(ii) For the equity ratio, decreasing modified equity by that amount; and

(iii) For the net income ratio, decreasing income before taxes by that amount;

(2) For liabilities incurred by a non-profit institution—

(i) For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount;

(ii) For the equity ratio, decreasing modified net assets by that amount; and

(iii) For the net income ratio, decreasing change in net assets without donor restrictions by that amount; and

(3) For the amount of owner's equity withdrawn from a proprietary institution—

(i) For the primary reserve ratio, decreasing adjusted equity by that amount; and

(ii) For the equity ratio, decreasing modified equity by that amount.

(f) *Reporting requirements.* (1) In accordance with procedures established by the Secretary, an institution must notify the Secretary of the following actions or events—

(i) For a liability incurred under paragraph (c)(1)(i)(A) of this section, no later than 10 days after the date of written notification to the institution of the final judgment or final determination;

(ii) For a withdrawal of owner's equity described in paragraph (c)(1)(i)(B) of this section—

(A) For a capital distribution that is the equivalent of wages in a sole proprietorship or partnership, no later than 10 days after the date the Secretary notifies the institution that its composite score is less than 1.5. In response to that notice, the institution must report the total amount of the wage-equivalent distributions it made during its prior fiscal year and any distributions that were made to pay any taxes related to the operation of the institution. During its current fiscal year and the first six months of its subsequent fiscal year (18-month period), the institution is not required to report any distributions to the Secretary, provided that the institution does not make wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year, less any distributions that were made to pay any taxes related to the operation of the institution. However, if the institution makes wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year less any distributions that were made to pay any taxes related to the operation of the institution at any time during the 18-month period, it must report each of those distributions no later than 10 days after they are made, and the Secretary recalculates the institution's composite score based on the cumulative amount of the distributions made at that time;

(B) For a distribution of dividends or return of capital, no later than 10 days after the dividends are declared or the amount of return of capital is approved; or

(C) For a related party receivable, not later than 10 days after that receivable occurs;

(iii) For the provisions relating to a publicly traded institution under paragraph (c)(2) of this section, no later than 10 days after the date that—

(A) The SEC issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Exchange Act or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or

(B) The national securities exchange on which the institution's securities are traded involuntarily delists its securities, or the institution voluntarily delists its securities, pursuant to the rules of the relevant national securities exchange;

(iv) For an action under paragraph (d)(1) of this section, 10 days after the date on which the institution is notified by its accrediting agency of that action;

(v) For the loan agreement provisions in paragraph (d)(2) of this section, 10 days after a loan violation occurs, the creditor waives the violation, or the creditor imposes sanctions or penalties in exchange or as a result of granting the waiver;

(vi) For a State agency notice relating to terminating an institution's licensure or authorization under paragraph (d)(3) of this section, 10 days after the date on which the institution receives that notice; and

(vii) For the non-title IV revenue provision in paragraph (d)(4) of this section, no later than 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(3).

(2) The Secretary may take an administrative action under paragraph (i) of this section against an institution, or determine that the institution is not financially responsible, if it fails to provide timely notice to the Secretary as provided under paragraph (f)(1) of this section, or fails to respond, within the timeframe specified by the Secretary, to any determination made, or request for information, by the Secretary under paragraph (f)(3) of this section.

(3)(i) In its notice to the Secretary under this paragraph, or in its response to a preliminary determination by the Secretary that the institution is not financially responsible because of a triggering event under paragraph (c) or (d) of this section, in accordance with procedures established by the Secretary, the institution may—

(A) Demonstrate that the reported withdrawal of owner's equity under paragraph (c)(1)(i)(B) of this section was used exclusively to meet tax liabilities

of the institution or its owners for income derived from the institution;

(B) Show that the creditor waived a violation of a loan agreement under paragraph (d)(2) of this section. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (d)(2)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not adversely affect the institution's ability to meet its financial obligations;

(C) Show that the triggering event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the liabilities that arise under paragraph (c)(1)(i)(A) of this section; or

(D) Explain or provide information about the conditions or circumstances that precipitated a triggering event under paragraph (c) or (d) of this section that demonstrates that the triggering event has not or will not have a material adverse effect on the institution.

(ii) The Secretary will consider the information provided by the institution in determining whether to issue a final determination that the institution is not financially responsible.

(g) *Public institutions.* (1) The Secretary considers a domestic public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(ii) Is not subject to a condition of past performance under § 668.174.

(2) The Secretary considers a foreign public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and

(ii) Is not subject to a condition of past performance under § 668.174.

(h) *Audit opinions and disclosures.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if, in the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the financial statements contain a disclosure in the notes to the financial statements that there is substantial doubt about the institution's ability to continue as a going concern as required by accounting standards, unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition, or that the substantial doubt about the institution's ability to continue as going concern has been alleviated.

(i) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

■ 6. Section 668.172 is amended by:

■ a. Adding paragraphs (d) and (e).

■ b. Removing the parenthetical authority citation.

The additions read as follows:

§ 668.172 Financial ratios.

* * * * *

(d) *Accounting for operating leases.* The Secretary accounts for operating leases by—

(1) Applying FASB Accounting Standards Update (ASU) 2016–02, Leases (Topic 842) to all leases the institution has entered into on or after December 15, 2018 (post-implementation operating/financing leases), as specified in the Supplemental Schedule (see Section 2 of Appendix A to this subpart and Section 2 of Appendix B to this subpart);

(2) Treating leases the institution entered into prior to December 15, 2018 (pre-implementation operating/financing leases), as they would have been treated prior to the requirements of ASU 2016–02, as long as the institution provides information about those leases on the Supplemental Schedule and a note in, or on the face of, its audited financial statements; and

(3) Accounting for any adjustments, such as any options exercised by the institution to extend the life of a pre-implementation operating/finance lease, as post-implementation operating/finance leases.

(e) *Incorporation by Reference.* (1) The material required in this section is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Department of Education, Office of the General Counsel, 202–401–6000, and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) Financial Accounting Standards Board (FASB), 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116, (203) 847–0700, *www.fasb.org.*

(i) Accounting Standards Update (ASU) 2016–02, Leases (Topic 842), (February 2016).

(ii) [Reserved]

* * * * *

■ 7. Section 668.175 is amended by revising paragraphs (a) through (c), (f) and (h) and removing the parenthetical authority citation.

The revisions read as follows:

§ 668.175 Alternative standards and requirements.

(a) *General.* An institution that is not financially responsible under the general standards and provisions in § 668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.

(b) *Letter of Credit or surety alternative for new institutions.* A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Secretary, or providing other surety described under paragraph (h)(2)(i) of this section, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Financial protection alternative for participating institutions.* A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), (c), or (d), or because of an audit opinion or going concern disclosure described under § 668.171(h), qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Secretary, or providing other financial protection described under paragraph (h) of this section, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution.

* * * * *

(f) *Provisional certification alternative.* (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b), its recalculated composite score under § 668.171(e) is less than 1.0, it is subject to an action or event under § 668.171(c), or an action or event under paragraph (d) that has an adverse material effect on the institution as determined by the Secretary, or because of an audit opinion or going concern disclosure described in § 668.171(h); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition; and

(2) Under this alternative, the institution must—

(i) Provide to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, or provide other financial protection described under paragraph (h) of this section, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution that the Secretary determines is backed by the full faith and credit of the State;

(ii) Demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171(b)(3), for its two most recent fiscal years; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification but the Secretary—

(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), or both, to provide to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs;

(ii) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(iii) May require the institution to provide, or continue to provide, the financial protection resulting from an event described in § 668.171(c) and (d) until the institution meets the requirements of paragraph (f)(4) of this section.

(4) The Secretary maintains the full amount of financial protection provided by the institution under this section until the Secretary first determines that the institution has—

(i) A composite score of 1.0 or greater based on a review of the audited financial statements for the fiscal year in which all liabilities from any event described in § 668.171(c) or (d) on which financial protection was required; or

(ii) A recalculated composite score of 1.0 or greater, and any event or condition described in § 668.171(c) or (d) has ceased to exist.

* * * * *

(h) *Financial protection.* (1) In accordance with procedures established by the Secretary or as part of an agreement with an institution under this section, the Secretary may use the funds from that financial protection to satisfy the debts, liabilities, or reimbursable costs, including costs associated with teach-outs as allowed by the Department, owed to the Secretary that are not otherwise paid directly by the institution.

(2) In lieu of submitting a letter of credit for the amount required by the Secretary under this section, the Secretary may permit an institution to—

(i) Provide the amount required in the form of other surety or financial protection that the Secretary specifies in a document published in the **Federal Register**;

(ii) Provide cash for the amount required; or

(iii) Enter into an arrangement under which the Secretary offsets the amount of title IV, HEA program funds that an institution has earned in a manner that ensures that, no later than the end of a six to twelve-month period selected by the Secretary, the amount offset equals the amount of financial protection the institution is required to provide. The Secretary provides to the institution any funds not used for the purposes described in paragraph (h)(1) of this section during the period covered by the agreement, or provides the institution any remaining funds if the institution subsequently submits other financial protection for the amount originally required.

* * * * *

■ 8. Appendix A to subpart L of part 668 is revised to read as follows:

Appendix A to Subpart L of Part 668—Ratio Methodology for Propriety Institutions

BILLING CODE 4001–01–P

Appendix A: Ratio Methodology for Propriety Institutions

SECTION 1: Ratio and Ratio Terms

Primary Reserve Ratio	$\frac{\text{Adjusted Equity}}{\text{Total Expenses and Losses}}$
Equity Ratio	$\frac{\text{Modified Equity}}{\text{Modified Assets}}$
Net Income Ratio	$\frac{\text{Income Before Taxes}}{\text{Total Revenue and Gains}}$

Total Expenses and Losses excludes income tax, discontinued operations not classified as an operating expense or change in accounting principle and any losses on investments, post-employment and defined benefit pension plans and annuities. Any losses on investments would be the net loss for the investments. Total Expenses and Losses includes the nonservice component of net periodic pension and other post-employment plan expenses.

Modified Equity = (total owner's equity) –(intangible assets) –(unsecured related-party receivables)

Modified Assets = (total assets) –(intangible assets) –(unsecured related-party receivables)

Income Before Taxes includes all revenues, gains, expenses and losses incurred by the school during the accounting period. Income before taxes does not include income taxes, discontinued operations not classified as an operating expense or changes in accounting principle.

Total Revenues and Gains does not include positive income tax amounts, discontinued operations not classified as an operating gain, or change in accounting principle (investment gains should be recorded net of investment losses).

* Unsecured related party receivables based on the related party disclosures as required by 34 C.F.R 668.23(d).

** The value of property, plant and equipment includes construction in progress and lease right-of-use assets, and is net of accumulated depreciation/amortization.

*** All debt obtained for long-term purposes, not to exceed total net property, plant and equipment includes lease liabilities for lease right-of-use assets and the short-term portion of the debt, up to the amount of net property, plant and equipment and construction in progress short-term line of credits and note payable, not to exceed total construction in progress. If an institution wishes to include the debt, including debt obtained through long-term lines of credit in total debt obtained for long-term purposes, the institution must include a disclosure in the financial statements that the debt, including lines of credit exceeds twelve months and was used to fund capitalized assets (i.e. property, plant and equipment or capitalized expenditures per Generally Accepted Accounting Principles (GAAP)). If an institution wishes to include short-term lines of credit or notes payable for construction in progress, the institution must include a disclosure in the notes of the financial statements. The disclosures that must be presented for any debt to be used in adjusted equity include the issue date, term, nature of capitalized amounts and amounts capitalized. Institutions that do not include debt in total debt obtained for long-term purposes, including long-term lines of credit, do not need to provide any additional disclosures other than those required by GAAP. The debt obtained for long-term purposes will be limited to only those amounts disclosed in the financial statements that were used to fund capitalized assets. Any debt amount including long-term lines of credit used to fund operations must be excluded from debt obtained for long-term purposes. Any debt obtained for long-term purposes post-implementation must be directly associated with the property, plant and equipment acquired with that debt. In determining the amount of pre-implementation property, plant and equipment to include in the primary reserve ratio, the Department will use the lesser of the property, plant and equipment minus depreciation/amortization or other reductions or the qualified debt obtained for long-term purposes minus any payments or other reductions as the amount of debt obtained for long-term purposes in determining the amount of pre-implementation property, plant and equipment that should be included in the primary reserve ratio.

The basis for the pre-implementation property, plant and equipment and qualified debt obtained for long-term purposes will be the amounts reported in the institutions most recently accepted financial statement submission to the Department prior to the effective date of these regulations. An institution must adjust the amount of pre-implementation debt by any payments or other reductions and the pre-implementation property, plant and equipment by any depreciation/amortization or other reductions in subsequent years. Post-implementation debt will be the amount of debt that an institution used to obtain property, plant and equipment since the end of the fiscal year of its most recently accepted financial statement submission to the Department prior to the effective date of these regulations less any payments or other reductions. Post- implementation property, plant and equipment will be the amount of property, plant and equipment that an institution obtained since the end of the fiscal year of its most recently accepted financial statement submission to the Department prior to the effective date of these regulations less any depreciation/amortization or other reductions. An institution must adjust post-implementation debt by any debt obtained and associated with property, plant and equipment in subsequent years and any payments or other reductions. An institution must adjust post-implementation property, plant and equipment by any property, plant and equipment obtained in subsequent years and any depreciation/amortization or other reductions in subsequent years. Any refinanced or renegotiated debt cannot increase the amount of debt associated with previously purchased property, plant and equipment.

SECTION 2: Financial Responsibility Supplemental Schedule Requirement and Example

A Supplemental Schedule must be submitted as part of the required audited financial statements submission. The Supplemental Schedule contains all of the financial elements required to compute the composite score. Each item in the Supplemental Schedule must have a reference to the Balance Sheet, Statement of (Loss) Income, or Notes to the Financial Statements. The amount entered in the Supplemental Schedules should tie directly to a line item, be part of a line item (if part of a line item it must also include a note disclosure of the actual amount), or a note in the financial statements

"Financial Responsibility Supplemental Schedule"

Example location of number in the financial statements and/or notes - the number reference to sample numbers; however, could be more lines based on financial statements and/or notes

Lines		**Primary Reserve Ratio:**		
		Adjusted Equity		
31	Balance Sheet – Total Equity	Total equity		3,035,000
4,5,10	Balance Sheet - All Related party receivable, net and Receivable from affiliate, net and Related party note*	Secure and Unsecured related party receivables and/or other related party assets	1.330,000	
4, 10	Balance Sheet - Related party receivable, net and Receivable from affiliate, net and Related party note*	Unsecured related party receivables and/or other related party assets		1,130,000
8	Balance Sheet - Property, Plant and Equipment, net*	Property, plant and equipment, net - including construction in progress	7,000,000	
FS Note line 8A	Note of the Financial Statements -Balance Sheet - Property, Plant and Equipment, net - pre-implementation*	Property, plant and equipment, net - pre-implementation less any construction in progress		5,500,000
FS Note line 8B	Note of the Financial Statements Balance Sheet - Property, Plant and Equipment, net - post-implementation with outstanding debt for original purchase*	Property, plant and equipment, net - post-implementation less any construction in progress with outstanding debt for original purchase with debt*		1,000,000
FS Note line 8D	Note of the Financial Statements Balance Sheet - Property, Plant and Equipment, net - post-implementation without outstanding debt for original purchase*	Property, plant and equipment, net - post-implementation less any construction in progress with outstanding debt for original purchase without debt*		300,000
FS Note line 8C	Note of the Financial Statements Balance Sheet -Property, Plant and Equipment - Construction in process	Construction in progress (		200,000
9	Balance Sheet - Lease right-of-use asset*	Lease right-of use asset	2,500,000	
Excluded 9 Note Leases	Note of Financial Statements - Balance Sheet - Lease right-of-use asset pre-implementation*	Lease right-of use asset - pre-implementation		1,500,000
M9 Note Leases	Note of Financial Statements - Balance Sheet - Lease right-of-use asset pre-implementation*	Lease right-of use asset - post-implementation		1,000,000
11	Balance Sheet - Goodwill*	Intangible assets		80,000
27	Balance Sheet - Post-employment and pension liability*	Post-employment and defined pension plan liabilities		300,000
15, 19, 20, 23 24	Balance Sheet - Notes payable and Line of Credit (both current and long-term) and Line of Credit for Construction in process*	Long-term debt - for long-term purposes and Construction in process debt	5,975.000	
M15, 19 20,23 24 Note Debt A.	Balance Sheet - Notes payable and Line of Credit (both current and long-term) and Line of Credit for Construction in process*	Long-term debt for long-tern purposes pre-implementation		4,925,000
Debt Note B	Balance Sheet - Notes payable and Line of Credit (both current and long-term) for purchase of Property, Plant and Equipment	Qualified Long–term debt for long-term purposes post-implementation for purchase of Property, Plant and Equipment		900,000

Debt Note C	Balance Sheet - Notes payable and Line of Credit for Construction in process*	Line of Credit for Construction in process		100,000
17, 25	Balance Sheet - Lease right-of-use assets liability (both current and long-term)*	Lease right-of-use asset liability	2,100,000	
Excluded 17,25 Leases	Balance Sheet - Lease right-of-use assets liability (both current and long-term	Pre-Implementation right-of-use leases		1,100,000
M17, 25 FS Note	Balance Sheet - Lease right-of-use assets liability (both current and long-term	Post-Implementation right-of-use leases		1,000,000
40, 42, 44, 45	Statement of (Loss) Income - Total Operating Expenses, Interest Expense, Loss on Impairment of Assets and Loss on Disposal of Assets*	**Total Expenses and Losses:**		5,900,000

Lines		**Equity Ratio:**		
		Modified Equity		
31	Balance Sheet - Total Equity	Total equity		3,035,000
Excluded 17, 25 Leases	Balance Sheet - Lease right-of-use assets liability (both current and long-term	Pre-Implementation right-of-use leases		1,100,000
Excluded 9 Note Leases	Note of Financial Statements - Balance Sheet - Lease right-of-use asset pre-implementation*	Lease right-of use asset - pre-implementation		1,500,000
11	Balance Sheet - Goodwill*	Intangible assets		80,000
4,5,10	Balance Sheet - All Related party receivable, net and Receivable from affiliate, net and Related party note*	Secure and Unsecured related party receivables and/or other related party assets	1.330,000	
4, 10	Balance Sheet - Related party receivable, net and Receivable from affiliate, net and Related party note*	Unsecured related party receivables and/or other related party assets		1,130,000
		Modified Assets:		
13	Balance Sheet - Total Assets	Total assets		14,210,000
Excluded 9 Note Leases	Note of Financial Statements - Balance Sheet - Lease right-of-use asset pre-implementation*	Lease right-of use asset - pre-implementation		1,500,000
11	Balance Sheet - Goodwill*	Intangible assets		80,000
4,5,10	Balance Sheet - All Related party receivable, net and Receivable from affiliate, net and Related party note*	Secure and Unsecured related party receivables and/or other related party assets	1.330,000	
4,10	Balance Sheet - Related party receivable, net and Receivable from affiliate, net and Related party note*	Unsecured related party receivables and/or other related party assets		1,130,000

Lines		**Net Income Ratio:**		
48	Statement of (Loss) Income - Net Income Before Income Taxes	**Income Before Taxes**		1,070,000
35, 43, 46	Statement of (Loss) Income - Total Revenue, Interest income and Other miscellaneous income*	**Total Revenues and Gains**		6,970,000

* In the example the number came from the actual financial statements; however, the number could come from the notes.

ECTION 3: Example Financial Statement and Composite Score Calculation

BALANCE SHEET

Line		
	Current Assets	
1	Cash and cash equivalents	790,000
2	Accounts receivable, net	1,010,000
3	Prepaid expenses	150,000
4	Related party receivable	130,000
5	Related party receivable, secured	200,000
6	Student loans receivable, net	1,330,000
7	**Total Current Assets**	3,610,000
8	Property, plant and equipment, net	7,000,000
9	Lease right-of-use assets, net	2,500,000
10	Receivable from affiliate, net	1,000,000
11	Goodwill	80,000
12	Deposits	20,000
13	**Total Assets**	14,210,000
	Current Liabilities	
14	Accounts payable/Accrued expenses	850,000
15	Line of credit –short term CIP	100,000
16	Deferred revenue	650,000
17	Leases right-of-use assets liability	100,000
18	Line of credit – operating	100,000
19	Line of credit - for long term purposes	75,000
20	Note payable	300,000
21	**Total Current Liabilities**	2,175,000
22	Line of credit – operating	200,000
23	Line of credit - for long term purposes	500,000
24	Notes payable	5,000,000
25	Lease right-of-use asset liabilities	2,000,000
26	Other liabilities	1,000,000
27	Post-employment and pension liability	300,000
28	**Total Liabilities**	11,175,000
	Equity	
29	Common stock	500,000
30	Retained earnings	2,535,000
31	**Total Equity**	3,035,000
32	**Total Liabilities and Equity**	14,210,000

STATEMENT OF (LOSS) INCOME

Line		
	Revenue	
33	Tuition and fees, net	6,400,000
34	Clinic revenue	300,000
35	**Total Revenue**	6,700,000
	Operating Expenses	
36	Education expense	2,000,000
37	General expense	1,400,000
38	Occupancy expense	500,000
39	Depreciation and Amortization	350,000
40	**Total Operating Expenses**	4,250,000
41	**Operating Income (Loss)**	2,450,000
	Other Income (expense)	
42	Interest expense	(750,000)
43	Interest income	20,000
44	Loss on impairment of assets	(400,000)
45	Loss on disposal of assets	(500,000)
46	Other miscellaneous income	250,000
47	**Total Other Income (Expense)**	(1,380,000)
48	**Net Income Before Income Taxes**	1,070,000
49	Income taxes	267,000
50	**Net Income (Loss)**	803,000

Note for Line 9 - Lease right-of-use assets

A.	Lease right-of-use assets - pre-implementation	1,500,000	Removed from Assets
B	Lease right-of-use assets- post implementation	1,000,000	
	Total	2,500,000	

Note for Line 8 - Net Property, Plant and Equipment

A.	Pre-Implementation Property, Plant and Equipment		5,500,000
B.	Post-Implementation Property, Plant and Equipment		1,000,000
	Vehicles	500,000	
	Furniture	300,000	
	Computers	200,000	
C.	Construction in progress		200,000
D.	Post-Implementation Property, Plant and Equipment		300,000
	Total		7,000,000

A. This is the ending balance on the last financial statement submission prior to the implementation of the regulations -- Less any depreciation or disposals

B. This is the balance of assets purchased after the implementation of the regulations that was purchased by obtaining debt

C. Asset value of the Construction in progress.

D. Post-Implementation Property, Plant and Equipment with no outstanding debt.

Notes for Line 15,19, 20,23 & 24 - Long-term debt for long term purposes

A.	Pre-Implementation Long-term Debt		4,925,000
B.	Allowable Post -Implementation Long-term Debt		900,000
	Vehicles	500,000	
	Furniture	200,000	
	Computers	220,000	
C.	Construction in progress –debt		100,000
D.	Long-term debt not for the purchase of Property, Plant and Equipment or liability greater than assets value (30,000 not for fixed assets & 20,000 above value of Property, Plant and Equipment)		50,000
	Total		5,975,000

A. This is the ending balance of the last financial statement submission prior to the implementation of the regulations --Less in repayments

B. This is the lessor of actual outstanding debt of each assets or the value of the asset. Therefore only $200,000 of the $220,000 debt for the computers is allowable.

C. All debt associated with Construction in progress up to the asset value for construction in process is included.

D. Long-term debt not for the purchase of Property, Plant and Equipment.

Note for Lines 17 and 25 - Lease right-of-use asset liability

A.	Lease right-of-use assets liability- pre-implementation	1,100,000	Remove from Liabilities
B.	Lease right-of-use assets liability - post-implementation	1,000,000	
	Total	2,100,000	

Calculating the Composite Score	Lines		
*Primary Reserve Ratio = Adjusted Equity	31-11-(4+10)-(8+M9)+27+(M15 +M17+M19+ M20+M23+M24+M25)	650,000	**0.1102**
/ Total Expenses and Losses	40 +42 +44 +45	5,900,000	
*Equity Ratio = Modified Equity	31 -(4 +10) -11	1,425,000	**0.1239**
/ Modified assets	13 -(4 +10) -11	11,500,000	
Net Income Ratio = Income Before Taxes	48	1,070,000	**0.1535**
/Total Revenues and Gains	35 +43 +46	6,970,000	

***All pre-implementation right-of-use assets and liabilities are removed from total assets and total liabilities**
M# - Modified for right-of-use liabilities pre-implementation and post-implementation debt not directly related to purchase of assets.

Step 1: Calculate the strength factor score for each ratio by using the following algorithms:

Primary Reserve strength factor score = 20 x the primary reserve ratio result

Equity strength factor score = 6 x the equity ratio result

Net Income strength factor score = 1 + (33.3 x net income ratio result)

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3.

If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 30% x the primary reserve strength factor score

Equity weighted score = 40% x the equity strength factor score

Net Income weighted score = 30% x the net income strength factor score

Composite Score = the sum of all weighted scores

Round the composite score to one digit after the decimal point to determine the final score

RATIO	Ratio	Strength Factor	Weight	Composite Scores
Primary Reserve Ratio	0.1102	2.2034	30%	0.6610
Equity Ratio	0.1239	0..7435	40%	0.2974
Net Income Ratio	0.1535	3.0000	30%	0.9000
				1.8584
TOTAL Composite Score - Rounded				**1.9**

■ 9. Appendix B to Subpart L of part 668 is revised to read as follows:

Appendix B to Subpart L of Part 668—Ratio Methodology for Private Non-Profit Institutions

Appendix B: Ratio Methodology for Private Non-Profit Institutions

SECTION 1: Ratio and Ratio Terms

Primary Reserve Ratio — Expendable Net Assets / Total Expenses without Donor Restrictions and Losses without Donor Restrictions

Equity Ratio — Modified Net Assets / Modified Assets

Net Income Ratio — Change in Net Assets without Donor Restrictions / Total Revenue without Donor Restrictions and Gains without Donor Restrictions

Definitions:

Expendable Net Assets = (net assets without donor restrictions) + (net assets with donor restrictions) - (net assets with donor restrictions: restricted in perpetuity)* – (annuities, term endowments and life income funds with donor restrictions)** – (intangible assets) – (net property, plant and equipment)*** + (post-employment and defined benefit pension plan liabilities) + (all long-term debt obtained for long-term purposes, not to exceed total net property, plant and equipment)**** – (unsecured related party receivables)*****

Total Expenses without Donor Restrictions and Losses without Donor Restrictions = All expenses and losses without donor restrictions from the Statement of Activities less any losses without donor restrictions on investments, post-employment and defined benefit pension plans and annuities. (For institutions that have defined benefit pension and other post-employment plans, total expenses include the nonservice component of net periodic pension and other post-employment plan expenses, and these expenses will be classified as non-operating. Consequently, such expenses will be labeled non-operating or included with "other changes –nonoperating changes—in net assets without donor restrictions" when the Statement of Activities includes an operating measure).

Modified Net Assets = (net assets without donor restrictions) + (net assets with donor restrictions) – (intangible assets) – (unsecured related party receivables)

Modified Assets = (total assets) – (intangible assets) – (unsecured related party receivables)

Change in net assets without donor restrictions is taken directly from the audited financial statements

Total Revenue without Donor Restriction and Gains without Donor Restrictions = total revenue (including amounts released from restriction) plus total gains. With regard to gains, investment returns are reported as a net amount (interest, dividends, unrealized and realized gains and losses net

of external and direct internal investment expense). Institutions that separately report investment spending as operating revenue (e.g. spending from funds functioning as endowments) and remaining net investment return as a non-operating item, will need to aggregate these two amounts to determine if there is a net investment gain or a net investment loss (net investment gains are included with total gains).

* Net assets with donor restrictions: restricted in perpetuity is subtracted from total net assets. The amount of net assets with donor restrictions: restricted in perpetuity is disclosed as a line item, part of a line item (if part of a line item it must also include a note disclosure of the actual amount) or a note, or a note in the financial statements.

**_Annuities, term endowments and life income funds with donor restrictions are subtracted from total net assets. The amount of annuities, term endowments and life income funds with donor restrictions is disclosed in as a line item (if part of a line item it must also include a note disclosure of the actual amount) or a note, or a note in the financial statements.

***The value of property, plant and equipment includes construction in progress and lease right-of-use assets and is net of accumulated depreciation/amortization.

**** All Debt obtained for long-term purposes, not to exceed total net property, plant and equipment includes lease liabilities for lease right-of-use assets and the short-term portion of the debt, up to the amount of net property, plant and equipment and construction in progress short-term lines of credit and notes payable, not to exceed total construction in progress. If an institution wishes to include the debt, including debt obtained through long-term lines of credit in total debt obtained for long-term purposes, the institution must include a disclosure in the financial statements that the debt, including lines of credit exceeds twelve months and was used to fund capitalized assets (i.e. property, plant and equipment or capitalized expenditures per Generally Accepted Accounting Principles (GAAP)). If an institution wishes to include short-term lines of credit or notes payable for construction in progress, the institution must include a disclosure in notes of the financial statements. The disclosures that must be presented for any debt to be included in expendable net assets include the issue date, term, nature of capitalized amounts and amounts capitalized. Institutions that do not include debt in total debt obtained for long-term purposes, including long-term lines of credit, do not need to provide any additional disclosures other than those required by GAAP. The debt obtained for long-term purposes will be limited to only those amounts disclosed in the financial statements that were used to fund capitalized assets. Any debt amount including long-term lines of credit used to fund operations must be excluded from debt obtained for long-term purposes.

The basis for the pre-implementation PP&E and qualified debt obtained for long-term purposes will be the amounts reported in the institutions most recently accepted financial statement submission to the Department prior to the effective date of these regulations. An institution must adjust the amount of pre-implementation debt by any payments or other reductions and the pre-implementation PP&E by any depreciation/amortization or other reductions in subsequent years. Post-implementation debt will be the amount of debt that an institution used to obtain PP&E since the end of the fiscal year of its most recently accepted financial statement submission to the Department prior to the effective date of these regulations less

any payments or other reductions. Post- implementation PP&E will be the amount of PP&E that an institution obtained since the end of the fiscal year of its most recently accepted financial statement submission to the Department prior to the effective date of these regulations less any depreciation/amortization or other reductions. An institution must adjust post-implementation debt by any debt obtained and associated with PP&E in subsequent years and any payments or other reductions. An institution must adjust post-implementation PP&E by any PP&E obtained in subsequent years and any depreciation/amortization or other reductions in subsequent years. Any refinanced or renegotiated debt cannot increase the amount of debt associated with previously purchased PP&E.

*** **Unsecured related party receivables based on the related party disclosures as required by 34 C.F.R 668.23(d).

SECTION 2: Financial Responsibility Supplemental Schedule Requirement and Example

A Supplemental Schedule must be submitted as part of the required audited financial statements submission. The Supplemental Schedule contains all of the financial elements required to compute the composite score. Each item in the Supplemental Schedule must have a reference to the Balance Sheet, Statement of (Loss) Income, or Notes to the Financial Statements. The amount entered in the Supplemental Schedules should tie directly to a line item, be part of a line item (if part of a line item it must also include a note disclosure of the actual amount), or a note in the financial statements

"Financial Responsibility Supplemental Schedule"

Example location of number in the financial statements and/or notes - the number reference to sample numbers; however, could be more lines based on financial statements and/or notes

Lines		Primary Reserve Ratio:		
		Expendable Net Assets:		
24	Statement of Financial Position - Net assets without donor restrictions	Net assets without donor restrictions		15,190,000
30	Statement of Financial Position – Net assets with donor restrictions	Net Assets with donor restrictions		11,800,000
4	Statement of Financial Position - Related party receivable and Related party note disclosure*	Secured and Unsecured related party receivable	100,000	
4	Statement of Financial Position - Related party receivable and Related party note disclosure*	Unsecured related party receivable		100,000
8	Statement of Financial Position - Property, plant and equipment, net	Property, plant and equipment, net (includes Construction in progress)	40,000,000	
FS Note line 8A	Note of the Financial Statements - Statement of Financial Position - Property, Plant and Equipment - pre-implementation*	Property, plant and equipment – pre-implementation		38,800,000
FS Note line 8B	Note of the Financial Statements - Statement of Financial Position - Property, Plant and Equipment - post-implementation with outstanding debt for original purchase*	Property, plant and equipment-post-implementation with outstanding debt for original purchase		750,000
FS Note line 8D	Note of the Financial Statements - Statement of Financial Position - Property, Plant and Equipment - post-implementation without outstanding debt for original purchase*	Property, plant and equipment -post implementation without outstanding debt for original purchase		250,000
FS Note line 8C	Not of the Financial Statements- Statement of Financial Position – Construction in process	Construction in process		200,000
9	Statement of Financial Position - Lease right-of-use assets, net**	Lease right-of-use asset, net	10,000,000	

Excluded Line 9 Note Leases	Note of Financial Statements - Statement of Financial Position - Lease right-of-use asset pre-implementation	Lease right-of-use asset pre-implementation		2,000,000
M9 Note Leases	Note of Financial Statements - Statement of Financial Position - Lease right-of-use asset post-implementation	Lease right-of-use asset post-implementation		8,000,000
10	Statement of Financial Position – Goodwill	Intangible assets		500,000
17	Statement of Financial Position - Post-employment and pension liabilities	Post-employment and pension liabilities		6,600,000
14, 20, 22	Statement of Financial Position - Note Payable and Line of Credit for long-term purposes (both current and long term) and Line of Credit for Construction in process	Long-term debt - for long term purposes	26,000,000	
M24, 20, 22, Note Debt A	Statement of Financial Position - Note Payable and Line of Credit for long-term purposes (both current and long term) and Line of Credit for Construction in process	Long-term debt - for long term purposes pre-implementation		25,000,000
M24, 20, 22, Note Debt B	Statement of Financial Position - Note Payable and Line of Credit for long-term purposes (both current and long term) and Line of Credit for Construction in process	Long-term debt - for long term purposes post-implementation		650,000
M24, 20, 22, Note Debt C	Statement of Financial Position - Note Payable and Line of Credit for long-term purposes (both current and long term) and Line of Credit for Construction in process	Line of Credit for Construction in process		100,000
21	Statement of Financial Position - Lease right-of-use of asset liability**	Lease right-of-use asset liability	10,000,000	
Excluded Line 21 Note Leases	Statement of Financial Position - Lease right-of-use of asset liability pre-implementation	Pre-implementation right-of-use leases		2,000,000
Line 21 Note Leases	Statement of Financial Position - Lease right-of-use of asset liability pre-implementation	Post-implementation right-of-use leases		8,000,000
25	Statement of Financial Position - Annuities*	Annuities with donor restrictions		300,000
26	Statement of Financial Position - Term Endowments*	Term endowments with donor restrictions		50,000
27	Statement of Financial Positions—Life Income Funds*	Life income funds with donor restrictions		150,000

29	Statement of Financial Position - Perpetual Funds*	Net assets with donor restrictions: restricted in perpetuity		8,800,000
		Total Expenses and Losses:		
43	Statement of Activities -, Total Operating Expenses, (Total from Statement of Activities prior to adjustments)	Total expenses without donor restrictions –taken directly from Statement of Activities		51,080,000
(35),45, 46,47,48,49	Statement of Activities _ Non-Operating (Investment return appropriated for spending), Investments, net of annual spending gain (loss), Other components of net periodic pension costs, Pension-related changes other than net periodic pension, Change in value of split-interest agreements and Other gains (loss)*- (Total from Statement of Activities prior to adjustments)	Non-Operating and Net Investment (loss)		1,900,000
(35), 45	Statement of Activities - (Investment return appropriated for spending) and Investments, net of annual spending, gain (loss)*	Net investment losses		400,000
47	Statement of Activities - Pension-related changes other than periodic pension*	Pension -related changes other than net periodic costs		350,000

	-	**Equity Ratio:**		
		Modified Net Assets:		
24	Statement of Financial Position - Net Assets without Donor Restrictions	Net assets without donor restrictions		15,190,000
30	Statement of Financial Position - Total Net Assets with Donor Restriction	Net assets with donor restrictions		11,800,000
10	Statement of Financial Position – Goodwill	Intangible assets		500,000
4	Statement of Financial Position - Related party receivable and Related party note disclosure*	Secured and Unsecured related party receivable	100,000	
4	Statement of Financial Position - Related party receivable and Related party note disclosure*	Unsecured related party receivables		100,000
		Modified Assets:		
12	Statement of Financial Position - Total assets	Total assets		76,240,000
Excluded Line 9 Note Leases	Note of Financial Statements - Statement of Financial Position - Lease right-of-use asset pre-implementation	Lease right-of-use asset pre-implementation		2,000,000
Excluded Line 21 Note Leases	Statement of Financial Position - Lease right-of-use of asset liability pre-implementation	Pre-implementation right-of-use leases		2,000,000

10	Statement of Financial Position – Goodwill	Intangible assets		500,000
4	Statement of Financial Position - Related party receivable and Related party note disclosure*	Secured and Unsecured related party receivable	100,000	
4	Statement of Financial Position - Related party receivables and Related party note disclosure*	Unsecured related party receivables		100,000

		Net Income Ratio:		
51	Statement of Activities - Change in Net Assets Without Donor Restrictions	**Change in Net Assets Without Donor Restrictions**		-80,000
38, (35), 50	Statement of Activities - (Net assets released from restriction), Total Operating Revenue and Other Additions and Sale of Fixed Assets, gains (losses)	**Total Revenues and Gains**		52,900,000

* In the example the number came from the actual financial statements; however, the number could come from the notes.

SECTION 3: Example Financial Statements and Composite Score Calculation

STATEMENT OF FINANCIAL POSITION

Line		
1	Cash and cash equivalents	1,720,000
2	Accounts receivable, net	6,000,000
3	Prepaid expenses	1,900,000
4	Related party receivable	100,000
5	Contributions receivable, net	2,000,000
6	Student loans receivable, net	8,000,000
7	Investments	6,000,000
8	Property, plant and equipment, net	40,000,000
9	Lease right-of-use asset, net	10,000,000
10	Goodwill	500,000
11	Deposits	20,000
12	**Total Assets**	**76,240,000**
13	Line of credit - short term	300,000
14	Line of credit –short term for CIP	100,000
15	Accrued expenses/Accounts payable	4,500,000
16	Deferred revenue	650,000
17	Post-employment and pension liability	6,600,000
18	Line of credit – operating	200,000
19	Other liabilities	1,000,000
20	Notes payable	24,000,000
21	Lease right-of-use asset liability	10,000,000
22	Line of credit for long term purposes	1,900,000
23	**Total Liabilities**	**49,250,000**
24	**Net Assets without Donor Restrictions**	**15,190,000**
	Net Assets with Donor Restrictions	
25	Annuities	300,000
26	Term endowments	50,000
27	Life income funds	150,000
28	Other restricted by purpose and time	2,500,000
29	Restricted in perpetuity	8,800,000
30	**Total Net Assets with Donor Restrictions**	**11,800,000**
31	**Total Net Assets**	**26,990,000**
32	**Total Liabilities and Net Assets**	**76,240,000**

STATEMENT OF ACTIVITIES

Line		
	Changes in Net Assets Without Donor Restrictions	
	Operating Revenue and Other Additions:	
33	Tuition and fees, net	43,200,000
34	Contributions	1,200,000
35	Investment return appropriated for spending	200,000
36	Auxiliary enterprises	7,000,000
37	Net assets released from restriction	500,000
38	**Total Operating Revenue and Other Additions**	**52,100,000**
	Operating Expenses and Other Deductions:	
39	Education and research expenses	38,000,000
40	Depreciation and Amortization	5,000,000
41	Interest expense	2,880,000
42	Auxiliary enterprises	5,200,000
43	**Total Operating Expenses**	**51,080,000**
44	**Change in Net Assets from Operations**	**1,020,000**
	Non-Operating Changes	
45	Investments, net of annual spending, gain (loss)	(600,000)
46	Other components of net periodic pension costs	(1,000,000)
47	Pension-related changes other than net periodic pension costs	(350,000)
48	Change in value of split-interest agreements	(80,000)
49	Other gains (losses)	(70,000)
50	Sale of fixed assets, gains (losses)	1,000,000
	Total Non-Operating Changes	**(1,100,000)**
51	**Change in Net Assets Without Donor Restrictions**	**(80,000)**
	Change in Net Assets With Donor Restrictions	
52	Contributions	400,000
53	Net assets released from restriction	(500,000)
54	**Change in Net Assets With Donor Restrictions**	**(100,000)**
55	**Change in Net Assets**	**(180,000)**
56	**Net Assets, Beginning of Year**	**27,170,000**
31	**Net Assets, End of Year**	**26,990,000**

Note for Line 8 – Lease right-of-use assets

A.	Lease right-of-use assets - pre-implementation	2,000,000	Removed from Assets
B	Lease right-of-use assets- post implementation	8,000,000	
	Total	10,000,000	

Note for Line 21 - Lease right-of-use asset liability

A.	Lease right-of-use assets liability- pre-implementation	2,000,000	Remove from Liabilities
B.	Lease right-of-use assets liability - post-implementation	8,000,000	
	Total	10,000,000	

Note for Line 8 - Net Property, Plant and Equipment

A.	Pre-Implementation Property, Plant and Equipment		38.800,000
B.	Post-Implementation Property, Plant and Equipment		750,000
	Vehicles	50,000	
	Furniture	300,000	
	Computers	400,000	
C.	Construction in progress		200,000
D.	Post-Implementation Property, Plant and Equipment		250,000
	Total		40,000,000

A. This is the ending balance on the last financial statement submission prior to the implementation of the regulations -- Less any depreciation or disposals

B. This is the balance of assets purchased after the implementation of the regulations that was purchased by obtaining debt

C. Asset value of the Construction in progress.

D. Post-Implementation Property, Plant and Equipment with no outstanding debt.

Notes for Line 14,20 and 24- Long-term debt for long term purposes

A.	Pre-Implementation Long-term Debt		25,000,0000
B.	Allowable Post -Implementation Long-term Debt		650,000
	Vehicles	50,000	
	Furniture	200,000	
	Computers	400,000	
C.	Construction in progress –debt		100,000
D.	Long-term debt not for the purchase of Property, Plant and Equipment or liability greater than assets value		250,000
	Total		

A. This is the ending balance of the last financial statement submission prior to the implementation of the regulations --Less in repayments

B. This is the lessor of actual outstanding debt of each asset or the value of the asset.

C. All debt associated with Construction in progress up to the asset value for construction in process is included.

D. Long-term debt not for the purchase of Property, Plant and Equipment.

SECTION 3: Example Financial Statements and Composite Score Calculation

Calculating the Composite Score without pre-implementation leases

	Lines		
*Primary Reserve Ratio = Expandable Net Assets	24+30-29-(25+26+27)-10-(8+9)+17+(M14+M20+M21+M22)-4	9,440,000	**0.1807**
/ Total Expenses and Losses Without Donor Restrictions	43+46+48+49	52,230,000	

*Equity Ratio = Modified Net Assets	24 + 30-10-4	26,390,000	**0.3584**
/ Modified assets	12-10-4	73,640,000	

Net Income Ratio = Change in Net Assets Without Donor Restrictions	51	(80,000)	**0.0015**
Total Revenues and Gains Without Donor Restrictions	38-35+50	52,900,000	

***All pre-implementation right-of-use assets and liabilities are removed from total assets and total liabilities**

M# - For post-implementation debt not directly related to purchase of assets.

Step 1: Calculate the strength factor score for each ratio by using the following algorithms:

Primary Reserve strength factor score = 10 x the primary reserve ratio result

Equity strength factor score = 6 x the equity ratio result

Negative net income ratio result: Net Income strength factor = 1 + (25 x net income ratio result)

Positive net income ratio result: Net income strength factor = 1 + (50 x net income ratio result)

Zero result for net income ratio: Net income strength factor = 1

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for the ratio is 3.

If the strength factor score for any ratio is less than or equal to -1, the strength factor score for the ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x the primary reserve strength factor score

Equity weighted score = 40% x the equity strength factor score

Net Income weighted score = 20% x the net income strength factor score

Composite Score = the sum of all weighted scores

Round the composite score to one digit after the decimal point to determine the final score

RATIO	Ratio	Strength Factor	Weight	Composite Scores
Primary Reserve Ratio	0.1807	1.8074	40%	0.7230
Equity Ratio	0.3584	2.1502	40%	0.8601
Net Income Ratio	(0.0015)	0.9622	20%	0.1924
				1.7755
TOTAL Composite Score - Rounded				**1.8**

BILLING CODE 4000–01–C

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 10. The authority citation for part 682 is revised to read as follows:

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

Section 682.410 also issued under 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087, 1091a, and 1099.

■ 11. Section 682.410 is amended by revising paragraph (b)(2) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(2) *Collection charges.* (i) Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency may charge a borrower an amount equal to the reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim unless, within the 60-day period after the guaranty agency sends the initial notice described in paragraph (b)(6)(ii) of this section, the borrower enters into an acceptable repayment agreement, including a rehabilitation agreement, and honors that agreement, in which case the guaranty agency must not charge a borrower any collection costs.

(ii) An acceptable repayment agreement may include an agreement described in § 682.200(b) (Satisfactory repayment arrangement), § 682.405, or paragraph (b)(5)(ii)(D) of this section. An acceptable repayment agreement constitutes a repayment arrangement or agreement on repayment terms satisfactory to the guaranty agency, under this section.

(iii) The costs under this paragraph (b)(2) include, but are not limited to, all attorneys' fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(18)(i) and 682.405(b)(1)(vi)(B), the amount charged a borrower must equal the lesser of—

(A) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(B) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 12. The authority citation for part 685 is revised to read as follows:

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

Section 685.205 also issued under 20 U.S.C. 1087a *et seq.*

Section 685.206 also issued under 20 U.S.C. 1087a *et seq.*

Section 685.212 also issued under 20 U.S.C. 1087a *et seq.;* 28 U.S.C. 2401.

Section 685.214 also issued under 20 U.S.C. 1087a *et seq.*

Section 685.215 also issued under 20 U.S.C. 1087a *et seq.*

Section 685.222 also issued under 20 U.S.C. 1087a *et seq.;* 28 U.S.C. 2401; 31 U.S.C. 3702.

Section 685.300 also issued under 20 U.S.C. 1087a *et seq.,* 1094.

Section 685.304 also issued under 20 U.S.C. 1087a *et seq.*

Section 685.308 also issued under 20 U.S.C. 1087a *et seq.*

§ 685.205 [Amended]

■ 13. Section 685.205 is amended:

■ a. In paragraph (b)(6)(i), by removing the citation ''§ 685.206(c)'' and adding, in its place, the citation ''§ 685.206(c), (d) and (e)''; and

■ b. By removing the parenthetical authority citation at the end of the section.

■ 14. Section 685.206 is amended:

■ a. In paragraph (c), by revising the subject heading;

■ b. By adding paragraphs (d) through (e); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision and additions read as follows:

§ 685.206 Borrower responsibilities and defenses.

* * * * *

(c) *Borrower defense to repayment for loans first disbursed prior to July 1, 2017.* * * *

* * * * *

(d) *Borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020.* For borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020, a borrower asserts and the Secretary considers a borrower defense in accordance with § 685.222.

(e) *Borrower defense to repayment for loans first disbursed on or after July 1, 2020.* This paragraph (e) applies to borrower defense to repayment for loans first disbursed on or after July 1, 2020.

(1) *Definitions.* For the purposes of this paragraph (e), the following definitions apply:

(i) A ''Direct Loan'' means a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan.

(ii) ''Borrower'' means

(A) The borrower; and

(B) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(iii) A ''borrower defense to repayment'' includes—

(A) A defense to repayment of amounts owed to the Secretary on a Direct Loan, or a Direct Consolidation Loan that was used to repay a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act; and

(B) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

(iv) The term ''provision of educational services'' refers to the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program.

(v) The terms ''school'' and ''institution'' may be used interchangeably and include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.

(2) *Federal standard for loans first disbursed on or after July 1, 2020.* For a Direct Loan or Direct Consolidation Loan first disbursed on or after July 1, 2020, a borrower may assert a defense to repayment under this paragraph (e),if the borrower establishes by a preponderance of the evidence that—

(i) The institution at which the borrower enrolled made a misrepresentation, as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and that directly and clearly relates to:

(A) Enrollment or continuing enrollment at the institution or

(B) The provision of educational services for which the loan was made; and

(ii) The borrower was financially harmed by the misrepresentation.

(3) *Misrepresentation.* A ''misrepresentation,'' for purposes of this paragraph (e), is a statement, act, or omission by an eligible school to a borrower that is false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Evidence that a misrepresentation defined in this paragraph (e) may have occurred includes, but is not limited to:

(i) Actual licensure passage rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(ii) Actual employment rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(iii) Actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are materially different from those included in the institution's marketing materials, website, or other communications made to the student or provided by the institution to national ranking organizations;

(iv) The inclusion in the institution's marketing materials, website, or other communication made to the student of specialized, programmatic, or institutional certifications, accreditation, or approvals not actually obtained, or the failure to remove within a reasonable period of time such certifications or approvals from marketing materials, website, or other communication when revoked or withdrawn;

(v) The inclusion in the institution's marketing materials, website, or other communication made to the student of representations regarding the widespread or general transferability of credits that are only transferrable to limited types of programs or institutions or the transferability of credits to a specific program or institution when no reciprocal agreement exists with another institution or such agreement is materially different than what was represented;

(vi) A representation regarding the employability or specific earnings of graduates without an agreement between the institution and another entity for such employment or sufficient evidence of past employment or earnings to justify such a representation or without citing appropriate national, State, or regional data for earnings in the same field as provided by an appropriate Federal agency that provides such data. (In the event that national data are used, institutions should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.);

(vii) A representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment;

(viii) A representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student;

(ix) A representation that the institution, its courses, or programs are endorsed by vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, governmental officials, Federal or State agencies, the United States Armed Forces, or other individuals or entities when the institution has no permission or is not otherwise authorized to make or use such an endorsement;

(x) A representation regarding the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made, such as representations regarding the institution's size; location; facilities; training equipment; or the number, availability, or qualifications of its personnel; and

(xi) A representation regarding the nature or extent of prerequisites for enrollment in a course or program offered by the institution that are materially different from the institution's actual circumstances at the time the representation is made, or that the institution knows will be materially different during the student's anticipated enrollment at the institution.

(4) *Financial harm.* Financial harm is the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in § 685.206(e)(3). Financial harm does not include damages for nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs. The Department does not consider the act of taking out a Direct Loan or a loan repaid by a Direct Consolidation Loan, alone, as evidence of financial harm to the borrower. Financial harm is such monetary loss that is not predominantly due to intervening local, regional, or national economic or labor market conditions as demonstrated by evidence before the Secretary or provided to the Secretary by the borrower or the school. Financial harm cannot arise from the borrower's voluntary decision to pursue less than full-time work or not to work or result from a voluntary change in occupation. Evidence of financial harm may include, but is not limited to, the following circumstances:

(i) Periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions;

(ii) A significant difference between the amount or nature of the tuition and fees that the institution represented to the borrower that the institution would charge or was charging and the actual amount or nature of the tuition and fees charged by the institution for which the Direct Loan was disbursed or for which a loan repaid by the Direct Consolidation Loan was disbursed;

(iii) The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment; and

(iv) The borrower's inability to complete the program because the institution no longer offers a requirement necessary for completion of the program in which the borrower enrolled and the institution did not provide for an acceptable alternative requirement to enable completion of the program.

(5) *Exclusions.* The Secretary will not accept the following as a basis for a borrower defense to repayment—

(i) A violation by the institution of a requirement of the Act or the Department's regulations for a borrower defense to repayment under paragraph (c) or (d) of this section or under § 685.222, unless the violation would otherwise constitute the basis for a successful borrower defense to repayment under this paragraph (e); or

(ii) A claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made, including, but not limited to—

(A) Personal injury;

(B) Sexual harassment;

(C) A violation of civil rights;

(D) Slander or defamation;

(E) Property damage;

(F) The general quality of the student's education or the reasonableness of an educator's conduct in providing educational services;

(G) Informal communication from other students;

(H) Academic disputes and disciplinary matters; and

(I) Breach of contract, unless the school's act or omission would otherwise constitute the basis for a successful defense to repayment under this paragraph (e).

(6) *Limitations period and tolling of the limitations period for arbitration proceedings.* (i) A borrower must assert a defense to repayment under this paragraph (e) within three years from the date the student is no longer enrolled at the institution. A borrower may only assert a defense to repayment under this paragraph (e) within the timeframes set forth in § 685.206(e)(6)(i) and (ii) and (e)(7).

(ii) For pre-dispute arbitration agreements, as defined in § 668.41(h)(2)(iii), the limitations period will be tolled for the time period beginning on the date that a written request for arbitration is filed, by either the student or the institution, and concluding on the date the arbitrator submits, in writing, a final decision, final award, or other final determination, to the parties.

(7) *Extension of limitation periods and reopening of applications.* For loans first disbursed on or after July 1, 2020, the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e)(6) or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered only if there is:

(i) A final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation, as defined in § 685.206(e)(3); or

(ii) A final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in § 685.206(e)(3).

(8) *Application and Forbearance.* To assert a defense to repayment under this paragraph (e), a borrower must submit an application under penalty of perjury on a form approved by the Secretary and sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. The form will note that pursuant to paragraph (b)(6)(i) of this section, if the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary will grant forbearance and notify the borrower of the option to decline forbearance. The application requires the borrower to—

(i) Certify that the borrower received the proceeds of a loan, in whole or in part, to attend the named institution;

(ii) Provide evidence that supports the borrower defense to repayment application;

(iii) State whether the borrower has made a claim with any other third party, such as the holder of a performance bond, a public fund, or a tuition recovery program, based on the same act or omission of the institution on which the borrower defense to repayment is based;

(iv) State the amount of any payment received by the borrower or credited to the borrower's loan obligation through the third party, in connection with a borrower defense to repayment described in paragraph (e)(2) of this section;

(v) State the financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges to have been caused and provide any information relevant to assessing whether the borrower incurred financial harm, including providing documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower if the borrower is a recent graduate (failure to provide such information results in a presumption that the borrower failed to actively pursue employment in the field); whether the borrower was terminated or removed for performance reasons from a position in the field for which the borrower's education prepared the borrower, or in a related field; and whether the borrower failed to meet other requirements of or qualifications for employment in such field for reasons unrelated to the school's misrepresentation underlying the borrower defense to repayment, such as the borrower's ability to pass a drug test, satisfy driving record requirements, and meet any health qualifications; and

(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the balance of the loan for which the defense to repayment application has been submitted, the institution may, if allowed or not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

(9) *Consideration of order of objections and of evidence in possession of the Secretary.* (i) If the borrower asserts both a borrower defense to repayment and any other objection to an action of the Secretary with regard to a Direct Loan or a loan repaid by a Direct Consolidation Loan, the order in which the Secretary will consider objections, including a borrower defense to repayment, will be determined as appropriate under the circumstances.

(ii) With respect to the borrower defense to repayment application submitted under this paragraph (e), the Secretary may consider evidence otherwise in the possession of the Secretary, including from the Department's internal records or other relevant evidence obtained by the Secretary, as practicable, provided that the Secretary permits the institution and the borrower to review and respond to this evidence and to submit additional evidence.

(10) *School response and borrower reply.* (i) Upon receipt of a borrower defense to repayment application under this paragraph (e), the Department will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a waiver signed by the student permitting the institution to provide the Department with items from the student's education record relevant to the defense to repayment claim to the school, and invite the school to respond and to submit evidence, within the specified timeframe included in the notice, which shall be no less than 60 days.

(ii) Upon receipt of the school's response, the Department will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school, and will give the borrower an opportunity to submit a reply within a specified timeframe, which shall be no less than 60 days. The borrower's reply must be limited to issues and evidence raised in the school's submission and any

evidence otherwise in the possession of the Secretary.

(iii) The Department will provide the school a copy of the borrower's reply.

(iv) There will be no other submissions by the borrower or the school to the Secretary, unless the Secretary requests further clarifying information.

(11) *Written decision.* (i) After considering the borrower's application and all applicable evidence, the Secretary issues a written decision—

(A) Notifying the borrower and the school of the decision on the borrower defense to repayment;

(B) Providing the reasons for the decision; and

(C) Informing the borrower and the school of the relief, if any, that the borrower will receive, consistent with paragraph (e)(12) of this section, and specifying the relief determination.

(ii) If the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in § 685.206(e)(6) or (7), the Department will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

(12) *Borrower defense to repayment relief.* (i) If the Secretary grants the borrower's request for relief based on a borrower defense to repayment under this paragraph (e), the Secretary notifies the borrower and the school that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay or will be reimbursed for amounts paid toward the loan voluntarily or through enforced collection. The amount of relief that a borrower receives may exceed the amount of financial harm, as defined in § 685.206(e)(4), that the borrower alleges in the application pursuant to § 685.206(e)(8)(v). The Secretary determines the amount of relief and awards relief limited to the monetary loss that a borrower incurred as a consequence of a misrepresentation, as defined in § 685.206(e)(3). The amount of relief cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense to repayment. In awarding relief, the Secretary considers the borrower's application, as described in § 685.206(e)(8), which includes information about any payments received by the borrower and the financial harm alleged by the borrower. In awarding relief, the Secretary also considers the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, which was previously provided to the borrower and the school, as described in § 685.206(e)(10). The Secretary also updates reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan.

(ii) The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include one or both of the following, if applicable:

(A) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act and

(B) Eliminating or recalculating the subsidized usage period that is associated with the loan or loans discharged pursuant to § 685.200(f)(4)(iii).

(13) *Finality of borrower defense to repayment decisions.* The determination of a borrower's defense to repayment by the Department included in the written decision referenced in paragraph (e)(11) of this section is the final decision of the Department and is not subject to appeal within the Department.

(14) *Cooperation by the borrower.* The Secretary may revoke any relief granted to a borrower under this section who refuses to cooperate with the Secretary in any proceeding under paragraph (e) of this section or under 34 CFR part 668, subpart G. Such cooperation includes, but is not limited to—

(i) Providing testimony regarding any representation made by the borrower to support a successful borrower defense to repayment; and

(ii) Producing, within timeframes established by the Secretary, any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(15) *Transfer to the Secretary of the borrower's right of recovery against third parties.* (i) Upon the grant of any relief under this paragraph (e), the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the provision of educational services for which the loan was received, against the school, its principals, its affiliates and their successors, or its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense to repayment and for the same loan for which the discharge was granted under this section.

(ii) The provisions of this paragraph (e)(15) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this paragraph (e)(15) limits or forecloses the borrower's right to pursue legal and equitable relief arising under applicable law against a party described in this paragraph (e)(15) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(16) *Recovery from the school.* (i) The Secretary may initiate an appropriate proceeding to require the school whose misrepresentation resulted in the borrower's successful borrower defense to repayment under this paragraph (e) to pay to the Secretary the amount of the loan to which the defense applies in accordance with 34 CFR part 668, subpart G. This paragraph (e)(16) would also be applicable for provisionally certified institutions.

(ii) The Secretary will not initiate such a proceeding more than five years after the date of the final determination included in the written decision referenced in paragraph (e)(11) of this section. The Department will notify the school of the borrower defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application.

* * * * *

■ 15. Section 685.212 is amended by revising paragraph (k) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(k) *Borrower defenses.* (1) If a borrower defense is approved under § 685.206(c) or under § 685.206(d) and § 685.222—

(i) The Secretary discharges the obligation of the borrower in whole or in part in accordance with the procedures in §§ 685.206(c) and 685.222, respectively; and

(ii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the loan that exceed the amount owed on that portion of the loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim subject to § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim subject to § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(2) In the case of a Direct Consolidation Loan, a borrower may assert a borrower defense under § 685.206(c) or § 685.222 with respect to a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act that was repaid by the Direct Consolidation Loan.

(i) The Secretary considers a borrower defense claim asserted on a Direct Consolidation Loan by determining—

(A) Whether the act or omission of the school with regard to the loan described in this paragraph (k)(2), other than a Direct Subsidized, Unsubsidized, or PLUS Loan, constitutes a borrower defense under § 685.206(c), for a Direct Consolidation Loan made before July 1, 2017, or under § 685.222, for a Direct Consolidation Loan made on or after July 1, 2017, and before July 1, 2020; or

(B) Whether the act or omission of the school with regard to a Direct Subsidized, Unsubsidized, or PLUS Loan made on after July 1, 2017, and before July 1, 2020, that was paid off by the Direct Consolidation Loan, constitutes a borrower defense under § 685.222.

(ii) If the borrower defense is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan.

(iii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the Direct Consolidation Loan that exceed the amount owed on that portion of the Direct Consolidation Loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim asserted under § 685.206(c), the limitation period under the law applicable to the claim on which relief was granted; or

(B) For a claim asserted under § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(iv) The Secretary returns to the borrower a payment made by the borrower or otherwise recovered on the loan described in this paragraph (k)(2) only if—

(A) The payment was made directly to the Secretary on the loan; and

(B) The borrower proves that the loan to which the payment was credited was not legally enforceable under applicable law in the amount for which that payment was applied.

(3) If a borrower's application for a discharge of a loan based on a borrower defense is approved under § 685.206(e), the Secretary discharges the obligation of the borrower, in whole or in part, in accordance with the procedures described in § 685.206(e).

* * * * *

■ 16. Section 685.214 is amended:

■ a. In paragraph (c)(1) introductory text, by removing the word ''In'' at the beginning of the paragraph and adding in its place ''For loans first disbursed before July 1, 2020, in'';

■ b. By redesignating paragraph (c)(2) as paragraph (c)(3);

■ c. By adding new paragraph (c)(2);

■ d. In newly redesignated paragraph (c)(3)(ii), by adding ''and before July 1, 2020,'' after ''on or after November 1, 2013,'';

■ e. By adding introductory text to paragraph (f);

■ f. By adding paragraph (g); and

■ g. By removing the parenthetical authority citation at the end of the section.

The additions read as follows:

§ 685.214 Closed school discharge.

* * * * *

(c) * * *

(2) For loans first disbursed on or after July 1, 2020, in order to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a completed application, and the factual assertions in the application must be true and made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) Certify that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after July 1, 2020 to attend a school;

(B) Did not complete the program of study at that school because the school closed on the date that the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the date that the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: The revocation or withdrawal by an accrediting agency of the school's institutional accreditation; revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State; the termination by the Department of the school's participation in a title IV, HEA program; the teach-out of the student's educational program exceeds the 180-day look-back period for a closed school loan discharge; or the school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study or a comparable program; and

(C) Did not complete the program of study or a comparable program through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(ii) Certify that the borrower (or the student on whose behalf the parent borrowed) has not accepted the opportunity to complete, or is not continuing in, the program of study or a comparable program through either an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

* * * * *

(f) *Discharge procedures.* The discharge procedures in this paragraph (f) apply to loans first disbursed before July 1, 2020.

* * * * *

(g) *Discharge procedures.* The discharge procedures in this paragraph (g) apply to loans first disbursed on or after July 1, 2020.

(1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 180 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination, and resumes collection.

* * * * *

■ 17. Section 685.215 is amended:

■ a. In paragraph (a)(1) introductory text, by removing the word ''The'' at the beginning of the paragraph and adding in its place ''For loans first disbursed before July 1, 2020, the'';

■ b. In paragraph (a)(1)(ii) introductory text, by removing the word ''Certified'' and adding in its place ''For loans first disbursed before July 1, 2020, certified'';

■ c. In paragraph (a)(1)(iv), removing the word ''or'' at the end of the paragraph;

■ d. Removing the period at the end of paragraph (a)(v) and adding in its place ''; or'';

■ e. Adding paragraph (a)(1)(vi);

■ f. Revising paragraph (c) introductory text;

■ g. Adding introductory text to paragraph (d);

■ h. Adding paragraphs (e) and (f); and

■ i. Removing the parenthetical authority citation at the end of the section.

The revisions and additions read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) * * *

(1) * * *

(vi) For loans first disbursed on or after July 1, 2020, certified eligibility for a Direct Loan for a student who did not have a high school diploma or its recognized equivalent and did not meet the alternative eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act applicable at the time of disbursement.

* * * * *

(c) *Borrower qualification for discharge.* This paragraph (c) applies to loans first disbursed before July 1, 2020. To qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

* * * * *

(d) *Discharge procedures.* This paragraph (d) applies to loans first disbursed before July 1, 2020.

* * * * *

(e) *Borrower qualification for discharge.* This paragraph (e) applies to loans first disbursed on or after July 1, 2020. In order to qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary, and the factual assertions in the application must be true and made under penalty of perjury. In the application, the borrower must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (e)(1) through (6) of this section have been met.

(1) *High School diploma or equivalent.* (i) In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative eligibility requirements, the borrower must certify that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received a disbursement of a loan, in whole or in part, on or after January 1, 1986, to attend a school; and

(B) Received a Direct Loan at that school and did not have a high school diploma or its recognized equivalent and did not meet the alternative to graduation from high school eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act applicable at the time of disbursement.

(ii) A borrower does not qualify for a false certification discharge under this paragraph (e)(1) if—

(A) The borrower was unable to provide the school with an official transcript or an official copy of the borrower's high school diploma or the borrower was home schooled and has no official transcript or high school diploma; and

(B) As an alternative to an official transcript or official copy of the borrower's high school diploma, the borrower submitted to the school a written attestation, under penalty of perjury, that the borrower had a high school diploma.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower must—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature; and

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Identity theft.* (i) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(*1*) Authentic specimens of the signature of the individual, as provided in paragraph (e)(2)(ii) of this section, or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(*2*) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(ii)(A) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(B) Identifying information includes, but is not limited to—

(*1*) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(*2*) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(*3*) Unique electronic identification number, address, or routing code; or

(*4*) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(5) *Claim to third party.* The borrower must state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(6) *Cooperation with Secretary.* The borrower must state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.214(e).

(7) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(f) *Discharge procedures.* This paragraph (f) applies to loans first disbursed on or after July 1, 2020.

(1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower the application described in paragraph (e) of this section, which explains the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit a completed application within 60 days of the date the Secretary suspended collection efforts, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits a completed application, the Secretary determines whether to grant a request for discharge under this section by reviewing the application in light of information available from the Secretary's records and from other sources, including, but not limited to, the school, guaranty agencies, State authorities, and relevant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination, and resumes collection.

* * * * *

■ 18. Section 685.222 is amended:

■ a. By revising the section heading;

■ b. In paragraph (a)(2), by adding the words ''and before July 1, 2020,'' after the words ''after July 1, 2017,'';

■ c. In paragraph (b), by adding the words ''under this section'' after the words ''The borrower has a borrower defense'';

■ d. In paragraph (c), by adding the words ''under this section'' after the words ''The borrower has a borrower defense'';

■ e. In paragraph (d)(1), by adding the words ''under this section'' after the words ''A borrower has a borrower defense'';

■ f. In paragraph (e)(2) introductory text, by adding the words ''under this section'' after the words ''Upon receipt of a borrower's application'';

■ g. In paragraph (e)(3) introductory text, by adding the words ''submitted under this section'' after the words ''review the borrower's application'';

■ h. In paragraph (e)(3)(ii), by removing the word ''Upon'' and adding in its place the words, ''For borrower defense applications under this section, upon'';

■ i. In paragraph (e)(4) introductory text, by adding the words ''under this section'' after the words ''fact-finding process'';

■ j. In paragraph (e)(5) introductory text, by adding the words ''under this section'' after the words ''Department official'';

■ k. In paragraph (f)(1) introductory text, by adding the words ''under this section'' after the words ''has a borrower defense'';

■ l. In paragraph (g) introductory text, by adding the words ''under this section'' after the words ''for which the borrower defense'';

■ m. In paragraph (h) introductory text, by adding the words ''under this section'' after the words ''for which the borrower defense''; and

■ n. By removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 685.222 Borrower defenses and procedures for loans first disbursed on or after July 1, 2017, and before July 1, 2020, and procedures for loans first disbursed prior to July 1, 2017.

* * * * *

Appendix A to Subpart B of Part 685 [Amended]

■ 19. Appendix A to subpart B of part 685 is amended by removing the word ''The'' at the beginning of the introductory text and adding in its place the words ''As provided in 34 CFR 685.222(i)(4), the''.

■ 20. Section 685.300 is amended by:

■ a. Revising paragraph (b)(8);

■ b. Removing paragraph (b)(11);

■ c. Removing ''and'' after ''any benefits associated with such a loan;'' from paragraph (b)(10);

■ d. Redesignating paragraph (b)(12) as paragraph (b)(11);

■ e. Adding ''; and'' after ''the purposes of Part D of the Act'' in newly redesignated paragraph (b)(11);

■ f. Adding a new paragraph (b)(12);

■ g. Removing paragraphs (d) through (i); and

■ h. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(8) Accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

* * * * *

(12) Accept responsibility and financial liability stemming from losses incurred by the Secretary for repayment of amounts discharged by the Secretary pursuant to §§ 685.206, 685.214, 685.215, 685.216, and 685.222.

* * * * *

■ 21. Section 685.304 is amended by:

■ a. Adding paragraphs (a)(3)(iii)(A) and (B);

■ b. Revising paragraph (a)(5);

■ c. Removing the word ''and'' after the words ''conditions of the loan;'' in paragraph (a)(6)(xii);

■ d. Redesignating paragraph (a)(6)(xiii) as paragraph (a)(6)(xvi) and adding new paragraph (a)(6)(xiii) and paragraphs (a)(6)(xiv) and (xv); and

■ e. Removing the parenthetical authority citation at the end of the section.

The additions and revision read as follows:

§ 685.304 Counseling borrowers.

(a) * * *

(3) * * *

(iii) * * *

(A) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(B) If a standardized interactive electronic tool is used to provide entrance counseling to the borrower, the school must provide to the borrower any elements of the required information that are not addressed through the electronic tool:

(*1*) In person; or

(*2*) On a separate written or electronic document provided to the borrower.

* * * * *

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence, distance education, or study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(6) * * *

(xiii) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to enter into a pre-dispute arbitration agreement, as defined in § 668.41(h)(2)(iii) of this chapter, or to sign a class action waiver, as defined in § 668.41(h)(2)(i) and (ii) of this chapter, the school must provide a written description of the school's dispute resolution process that the borrower has agreed to pursue, including the name and contact information for the individual or office at the school that the borrower may contact if the borrower has a dispute relating to the borrower's loans or to the provision of educational services for which the loans were provided;

(xiv) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to enter into a pre-dispute arbitration agreement, as defined in § 668.41(h)(2)(iii) of this chapter, the school must provide a written description of how and when the agreement applies, how the borrower enters into the arbitration process, and who to contact if the borrower has any questions;

(xv) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to sign a class-action waiver, as defined in § 668.41(h)(2)(i) and (ii) of this chapter, the school must explain how and when the waiver applies, alternative processes the borrower may pursue to seek redress, and who to contact if the borrower has any questions; and

* * * * *

■ 22. Section 685.308 is amended by revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 685.308 Remedial actions.

(a) *General.* The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the school is liable as a result of—

(1) The school's violation of a Federal statute or regulation;

(2) The school's negligent or willful false certification under § 685.215; or

(3) The school's actions that gave rise to a successful claim for which the Secretary discharged a loan, in whole or in part, pursuant to § 685.206, § 685.214, § 685.216, or § 685.222.

* * * * *

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