DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840–AD05

[Docket ID ED–2012–OPE–0010]

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) program, Federal Family Education Loan (FFEL) program, and William D. Ford Federal Direct Loan (Direct Loan) program regulations. These final regulations implement a new Income-Contingent Repayment (ICR) plan in the Direct Loan program based on the President's ''Pay As You Earn'' repayment initiative, incorporate recent statutory changes to the Income-Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the total and permanent disability (TPD) discharge process for borrowers in loan programs under title IV of the Higher Education Act of 1965, as amended (HEA). These final regulations implementing a new ICR plan and the statutory changes to the IBR plan will assist borrowers in repaying their loans while the changes to the TPD discharge process will reduce burden for borrowers who are disabled and seeking a discharge of their title IV debt.

DATES: *Effective date:* These regulations are effective July 1, 2013.

Implementation dates: For implementation dates, see the *Implementation Date of These Regulations* section of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information related to the Pay As You Earn repayment plan, and the IBR and ICR plans, Pamela Moran or Jon Utz at (202) 502–7732 or (202) 377–4040 or by email at: *Pamela.Moran@ed.gov* or *Jon.Utz@ed.gov.* For information related to Total and Permanent Disability Discharge, Gail McLarnon or Brian Smith at (202) 219–7048 or (202) 502–7551 or by email at *Gail.McLarnon@ed.gov* or *Brian.Smith@ed.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The combination of increased enrollment and rising tuition has contributed to a significant increase in student loan debt among Americans. The ability of recent college graduates to find immediate employment with wages adequate enough to repay this debt has been challenging.

For Federal student loan borrowers who suffer from a total and permanent disability, the Department's current TPD discharge process has led to inconsistencies in determining their eligibility for discharge and created undue hardship.

Based on the results of the negotiated rulemaking process and the advice and recommendations submitted by individuals and organizations in public hearing testimony and in written comments submitted to the Department, the final regulations will create a new Income-Contingent Repayment (ICR) plan in the Direct Loan program based on the President's ''Pay As You Earn'' repayment initiative, incorporate recent statutory changes to the Income-Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the TPD discharge process for borrowers in the title IV, HEA loan programs.

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

- Create a new ICR plan (the Pay As You Earn repayment plan) in the Direct Loan program based on the President's Pay As You Earn repayment initiative. The regulations support the administration's goal of making the statutory improvements made by the SAFRA Act included in the Health Care and Reconciliation Act of 2010 (Pub. L. 111–152) to the IBR plan available to some borrowers earlier than July 1, 2014, and make technical corrections and minor changes to the current ICR plan regulations, including the addition of provisions related to notification of income documentation requirements and the ICR loan forgiveness process.
- Amend the regulations governing the IBR plan to incorporate statutory changes made by the SAFRA Act and add new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.
- Revise the Perkins Loan and FFEL program regulations to permit borrowers to apply directly to the Department for a TPD discharge. In the Direct Loan program, borrowers would continue to apply directly to the Department for TPD discharges, as they do under the current Direct Loan regulations.
- Revise the Perkins, FFEL, and Direct Loan program regulations to permit a TPD discharge based on a borrower's Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) benefits indicating that the borrower's eligibility for disability benefits will be reviewed on a five- to seven-year schedule. This five- to seven-year review schedule classifies the borrower as permanently impaired—medical improvement not expected. Borrowers will still be subject to the three-year discharge review that is currently in place.
- Make conforming changes throughout the Perkins, FFEL, and Direct Loan program regulations referencing the use of an SSA disability notice of award in the TPD process.
- Reinstate a title IV loan discharged based on the borrower's TPD if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA disability notice of award.
- Require a Perkins, FFEL, or Direct Loan borrower to notify the Secretary, during the three-year period following a TPD discharge, if the borrower has been notified by the SSA that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA disability notice of award.
- Modify regulations in the Perkins Loan, FFEL, and Direct Loan programs to provide more detailed information to borrowers in letters explaining why a disability discharge has been denied.
- Define the term ''borrower's representative'' for purposes of the disability discharge application process and state that references to a borrower or a veteran in the TPD discharge regulations include a borrower's representative or a veteran's representative.
- Specify that the Department will deny a disability discharge application and collection will resume on the borrower's loans if the borrower receives a disbursement of a new title IV loan or receives a new grant under the Teacher Education Assistance for College and Higher Education (TEACH)

grant program made on or after the date the physician certified the borrower's disability discharge application or on or after the date the Secretary receives the borrower's SSA disability notice of award and before the date the Department makes a decision on the borrower's application for a TPD discharge.

• Specify that if a borrower's Perkins, FFEL, or Direct Loan program loan is reinstated, it returns to the status that it would have had if the TPD discharge application had not been received.

• Make corresponding changes to the TPD application process based on a certification from the Department of Veterans Affairs.

Chart 1 summarizes the final regulations and related benefits, costs, and transfers that are discussed in more detail in the *Regulatory Impact Analysis* of this preamble. The Department estimates that approximately 1.6 million borrowers could take advantage of the Pay As You Earn repayment plan with another million borrowers being affected by the statutory changes to the IBR plan reflected in these regulations. Significant benefits of these final regulations include a streamlined process for TPD discharges, enhanced notifications related to TPD, IBR, and ICR application and servicing processes, and reduced monthly payments for borrowers in partial financial hardship (PFH) status as a result of using a lower PFH threshold of 10 percent. The net budget impact of the regulations is $2.1 billion over the 2012 to 2021 loan cohorts.

CHART 1—SUMMARY OF THE PROPOSED REGULATIONS

Issue and key features	Benefits	Cost/transfers
Income-Contingent Repayment (34 CFR part 685):		
Establishes the Pay As You Earn repayment plan with features of IBR as revised by SAFRA for new borrowers on or after 10/1/2007 with a loan disbursement made on or after 10/1/2011. The Pay As You Earn repayment plan retains a cap on interest capitalization from current ICR.	Enhanced cash management option for borrowers.	Estimated net budget impact of $2.1 billion over the 2012–2021 loan cohorts.
Establishes threshold for PFH at 10 percent for Pay As You Earn repayment plan borrowers.	Reduced payments and shorter forgiveness period may encourage acknowledgement and payment of debt.	
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations.	Reduced monthly payments may allow greater participation in the economy.	
Retains current ICR program as ICR	An income-driven repayment option remains available to all borrowers.	
Establishes process for borrower notification and processing of loan forgiveness by loan holders.		
Income-Based Repayment (34 CFR part 685):		
Incorporates statutory changes from SAFRA	Benefits mirror those associated with proposed ICR changes.	
Threshold for PFH reduced from 15 percent to 10 percent for new borrowers after 7/1/2014.		
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations.		
Income-Based Repayment (34 CFR part 685, 34 CFR part 682):		
A smaller payment amount made under a forbearance can qualify as the single payment made in standard repayment plan for borrower leaving IBR to select another repayment plan.	Improved notifications around annual recertification of income may reduce number of borrowers removed from PFH for paperwork reasons.	No net budget impact from proposed regulations.
Modified notification and income documentation requirements for borrowers in IBR.		Estimated paperwork compliance costs of approximately $570,000 annually.
Establishes process for borrower notification and processing of loan forgiveness by loan holders.		
Total and Permanent Disability (34 CFR 674.61; 34 CFR 682.402; 34 CFR 685.213):		
Creates single discharge application process through the Department for all of a borrower's FFEL, Direct, and Perkins loans.	Simplifies process for borrowers	Estimated paperwork compliance burden of approximately $725,000.
Specifies that borrower's representative will receive all notifications and can be involved in all aspects of the process.	Departmental processing should increase consistency of TPD determinations.	
Enhanced notifications, including more detailed reasons for denials and information about options for reapplying.	Process changes could reduce reinstatements for paperwork reasons.	
Revised treatment of payments made following a TPD discharge	Simplifies application process for borrowers and the Department.	
Creation of standard form for reporting income during 3-year post-discharge monitoring period.		

CHART 1—SUMMARY OF THE PROPOSED REGULATIONS—Continued

Issue and key features	Benefits	Cost/transfers
Allows for acceptance of an SSA disability notice of award for Social Security Disability Insurance or Supplemental Security Income benefits as proof of a borrower's TPD if the notice indicates that the SSA will review the borrower's continuing eligibility for benefits once every five to seven years, thus indicating that the borrower's disability is in the medical improvement not expected category. The borrower would still be subject to the three-year post discharge monitoring period.		

On July 17, 2012 the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (77 FR 42086). The final regulations contain several changes from the NPRM. We fully explain the changes in the *Analysis of Comments and Changes* section of the preamble that follows.

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 and the conditions for early implementation.

Consistent with the Department's objective to provide critical information to and improve servicing processes for borrowers who repay under the IBR plan, the Secretary is exercising his authority under section 482(c) to designate the following new and amended regulations included in this document for early implementation beginning on November 1, 2012 at the discretion of each loan holder, as appropriate:

(1) Section 682.209(a)(6)(v)(C).
(2) Section 682.211(f)(16).
(3) Section 682.215(d).
(4) Section 682.215(e).

The Secretary intends to implement the regulations governing the Pay As You Earn repayment plan as soon as possible. We will publish a separate **Federal Register** notice to announce when the plan becomes available to borrowers.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 2,892 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical and other minor changes.

Total and Permanent Disability Discharge

General Comments

Comments: Many commenters supported the Department's proposed rules that allow a borrower to submit one application directly to the Department for a TPD discharge on all of the borrower's loans rather than to submit an application to each loan holder. The commenters also stated that the proposed changes to the discharge process would make it easier for disabled borrowers to provide the Department information necessary to make a loan discharge determination.

Discussion: The Department appreciates the commenters' support.

Changes: None.

Comments: Many individual commenters suggested a range of modifications to the proposed TPD regulations that would require statutory change. Some commenters suggested that private student loans should be discharged if the borrower is determined to be TPD. Other suggestions were:

• Eliminate the post-discharge monitoring period of a borrower's income following a TPD discharge;

• Do not treat loan amounts discharged based on the borrower's permanent and total disability as income for Federal tax purposes;

• Do not reinstate a title IV loan that was discharged due to TPD if the borrower has annual earnings from employment that exceed the poverty line if the earnings are not related to the degree financed by the discharged loan; and

• Require credit reporting agencies to remove references to TPD discharges from a borrower's credit report.

Discussion: We appreciate the commenters' suggestions; however, absent congressional action to amend the HEA or other pertinent laws, the Department generally does not have the authority to make these changes. The Federal Government does not have authority to require the discharge of a private student loan.

The post-discharge monitoring of a borrower's earned income is required under section 437(a)(1)(A)(ii) of the HEA when FFEL and, by extension, Direct Loans are discharged due to the borrower's TPD. Since the standard for TPD discharges is the same in all of the title IV loan programs, we believe that it is appropriate to require that the income of Perkins Loan borrowers be monitored and that the Perkins Loan be reinstated if the borrower's income exceeds the poverty line in the same manner as Direct Loan and FFEL program loans.

The treatment of loan amounts discharged based on the borrower's TPD as income for Federal tax purposes is governed by the Federal tax code, not the HEA.

Section 437(a)(1)(A)(ii) of the HEA requires reinstatement of a FFEL or Direct Loan discharged due to the borrower's TPD if the borrower's earned income exceeds the poverty line. The HEA does not distinguish between how the income is earned.

Finally, sections 430A(a)(5) and 463(c)(2)(C) of the HEA require FFEL and Perkins Loan holders, respectively, to report to credit reporting agencies when a FFEL or Perkins Loan is discharged due to TPD. This requirement applies to Direct Loans in accordance with section 455(a)(1) of the HEA. Section 605(a)(4) of the Fair Credit Reporting Act requires credit reporting agencies to report the disability discharge on the borrower's credit report for seven years.

Changes: None.

Comments: Many commenters indicated that they believed that the statutory definition of TPD added to the HEA by the Higher Education Opportunity Act of 2008 (HEOA) (Pub.

L. 110–315) is very similar to the definition used in the disability benefit programs administered by the Social Security Administration (SSA). The commenters expressed the belief that, by including a similar definition of the term ''total and permanent disability'' in the HEA, Congress showed that it intended for the Department to align its TPD determinations more closely with the SSA's determinations of permanent disability status to reduce the TPD application burden on borrowers already determined to be permanently disabled by the SSA. The commenters requested that the Department accept existing SSA disability determinations when making a determination that a borrower is TPD for title IV loan discharge purposes. The commenters stated that using SSA disability determinations, along with the proposed rule to allow borrowers to submit a single TPD application to the Department rather than submit separate discharge applications to each of their lenders, would further streamline the Department's TPD discharge process and reduce burden on borrowers, the Department, and loan holders.

One commenter urged the Department to consider borrowers eligible for a TPD discharge if the borrower, at a minimum, met the SSA definition of ''Medical Improvement Not Expected'' or ''Medical Improvement Possible'' after a period of at least 60 months. Another commenter noted that when the Department transitioned to a single servicer for TPD application purposes and before the Department adopted the current TPD discharge process, the Department considered, but decided against, adopting a TPD process under which borrowers could provide proof of an SSA disability determination in the form of an SSA disability notice of award indicating when the borrower's next SSA medical review would occur as evidence that the borrower was totally and permanently disabled for title IV loan discharge purposes. The commenter urged the Department to reconsider this decision.

Finally, several commenters noted that the Department already accepts disability determinations from the Department of Veterans Affairs (VA) when making the determination that a title IV borrower is eligible for a TPD discharge and urged the Department to do the same with SSA disability determinations.

Discussion: Upon consideration of these comments and internal deliberations, we have determined that we will accept the specific SSA notice of award for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) benefits as proof of a borrower's TPD if the notice indicates that the SSA will review the borrower's continuing eligibility for SSDI or SSI benefits once every five to seven years. Sections 437(a) and 464(c)(1)(F) of the HEA provide for the discharge of a borrower's title IV loans if the borrower becomes totally and permanently disabled in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months (five years), or can be expected to last for a continuous period of not less than 60 months (five years). In two related final regulations published in the **Federal Register** on October 28, 2009 (74 FR 55626), and on October 29, 2009 (74 FR 55972), we included the specific statutory substantial gainful activity standard in our regulations at §§ 674.51(aa) and 682.200(b). Section 674.51(x) of the Department's October 28, 2009, final regulations and § 682.200(b) of the Department's October 29, 2009, final regulations both defined ''substantial gainful activity'' to mean a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. We do not use an earnings standard to determine substantial gainful activity. However, if a title IV borrower has received a TPD discharge and, within three years after the loan is discharged, the borrower earns income from employment that exceeds 100 percent of the poverty guideline for a family of two ($1,275 per month in the 48 contiguous states, $1,577 per month in Alaska, and $1,451 per month in Hawaii) in a year, the borrower is not considered to have been disabled and the loan repayment obligation is reinstated.

The SSA defines the term ''disability'' to mean the inability of an individual to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months (42 U.S.C. 423). Upon making a disability determination based on this standard, the SSA is required by law to conduct disability reviews to determine the continuing eligibility of an individual for SSDI or SSI benefits where a finding has been made that such disability is permanent at such times as the Commissioner of Social Security determines to be appropriate (42 U.S.C. 421). The SSA has promulgated regulations to meet this statutory requirement under 20 CFR 404.1590 and 20 CFR 416.990. (20 CFR Part 404 and 20 CFR Part 416 govern the SSDI and SSI programs, respectively). Specifically, under 20 CFR 404.1590(d) and 20 CFR 416.990(d) of the SSA regulations, if an individual's impairment is expected to improve, generally the SSA reviews the individual's eligibility for disability benefits at intervals from six to 18 months following its most recent decision. This status is referred to as ''medical improvement expected diary'' under 20 CFR 404.1590(c) and 20 CFR 416.990(c) of the SSA regulations. If an individual's disability is not considered permanent but is such that any medical improvement is possible, the SSA reviews the individual's continuing eligibility for disability benefits at least once every three years under 20 CFR 404.1590(d) and 20 CFR 416.990(d), unless SSA determines the requirement should be waived under 20 CFR 404.1590(g) or 20 CFR 416.990(g). This type of disability is considered a ''nonpermanent impairment'' under 20 CFR 404.1590(c) and 20 CFR 416.990(c) of SSA regulations. Finally, if an individual's disability is considered a ''permanent impairment,'' the SSA reviews an individual's eligibility for benefits no less frequently than once every seven years, but no more frequently than once every five years under § 404.1590(d) and § 416.990(d). SSA regulations at 20 CFR 404.1590(c) and 20 CFR 416.990(c) use the term ''permanent impairment'' to refer to a case in which any medical improvement in an individual's impairment is not expected. The SSA uses the term ''permanent impairment'' to mean an extremely severe condition determined on the basis of the SSA's experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications and unlikely to improve so as to permit the individual to engage in substantial gainful activity. SSA may also consider the interaction of the individual's age, impairment consequences and lack of recent attachment to the labor market in determining whether an impairment is permanent. Regardless of an individual's classification, the SSA will conduct an immediate continuing disability review if a question of continuing disability is raised that meets any of the provisions of 20 CFR

404.1590(b) or 20 CFR 416.990(b). When the SSA notifies an individual that he or she is eligible for disability benefits, the notice also tells the individual when he or she can expect the first continuing disability review.

The SSA regulations, at 20 CFR 404.1572 and 20 CFR 416.910, use the term ''substantial gainful activity'' to describe a level of work activity and earnings. ''Substantial work activity'' involves doing significant physical or mental activities. ''Gainful work activity'' is either work performed for pay or profit or work of a nature generally performed for pay or profit. Substantial gainful activity is also indicated by earnings averaging over $1,010 per month (for the year 2012) for individuals whose impairment is anything other than blindness. The formula for determining substantial gainful activity for individuals who are blind is set forth in 42 U.S.C. 423, see also 20 CFR 404.1584, Social Security Ruling 12–1p. The formula for determining substantial gainful activity for individuals who are not blind is similar to that used for individuals who are blind and is provided in 20 CFR 404.1574 and 20 CFR 404.1575.

Although the Department's definition of ''substantial gainful activity'' does not precisely mirror the SSA's definition, we agree that they are substantially similar. For example, both agencies require that an individual must be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment in order to be determined disabled. Both agencies also define substantial gainful activity to mean a level of work performed for pay or profit that involves doing significant physical or mental activities or a combination of both. Both agencies allow an individual to engage in minimal levels of employment after receiving a disability determination as long as such employment does not exceed a specified dollar amount. And while it is unclear whether Congress intended for the Department to align its TPD determinations with the determination of permanent disability made by the SSA, we acknowledge that the standard a borrower must meet to establish eligibility for a title IV TPD discharge under section 437(a)(1) is substantially similar to the SSA's regulatory scheme governing a ''permanent impairment'' in 20 CFR 404.1590 and 20 CFR 416.990.

Section 437(a)(3) of the HEA explicitly provides the Secretary with the authority to provide the appropriate safeguards with regard to TPD. In light of this authority, the substantial similarity between the SSA and TPD statutory standards, and the burden reduction for applicants that will result from making this change, we have decided to allow a borrower to submit, as proof of the borrower's TPD, an SSA determination of permanent impairment-medical improvement not expected in the form of a SSDI or SSI notice of award that informs a borrower that his or her eligibility for SSA disability benefits will be reviewed no less frequently than once every seven years and no more frequently than once every five years (the five/seven year category).

We chose to accept only the five/seven year category as proof of TPD as opposed to the SSA's continuing disability review standard of every six- to 18-months or every three years to meet the Department's standard for TPD discharge purposes because the latter two standards indicate medical improvement expected or that medical improvement is possible, respectively, under 20 CFR 404.1590(c) and 20 CFR 416.990 of SSA's regulations. Medical improvement is expected in cases where a borrower's impairment can be treated and recovery can be anticipated. Medical improvement is possible where a borrower's impairment does not rise to the level of severity of an impairment that is considered permanent.

These regulations, along with regulations to allow borrowers to submit a single TPD application to the Department rather than separate discharge applications to each of their lenders, will further streamline the Department's TPD process and reduce burden on the Department as well as on borrowers who have already obtained such SSA documentation. Specifically, if we review the borrower's TPD application and the SSA notice of award for SSDI or SSI benefits specifies that the borrower will be reviewed no less frequently than once every seven years and no more frequently than once every five years for the purpose of establishing the borrower's continued eligibility for SSDI or SSI benefits, we will consider the borrower's title IV loans discharged as of the date we receive the SSA notice of award. The borrower would not be required to submit a certification by a physician that the borrower is TPD; the SSA notice of award for SSDI or SSI benefits alone will suffice as proof of the borrower's TPD.

We use the date the Secretary receives the borrower's SSA notice of award for SSDI or SSI benefits to ensure, for the program integrity purposes described below, that a borrower who receives a discharge based on an application supported by an SSA notice of award for SSDI or SSI benefits would still be subject to the three-year post-discharge monitoring period and the borrower responsibilities after discharge. Also, because a borrower who submits such a notice of award is not required to obtain a physician's certification (the date of which is used as the date of discharge), the date we receive an SSA notice of award for SSDI or SSI benefits is the earliest possible date we can use to discharge a borrower's loan without the benefit of the physician's certification date that is contained in the borrower's TPD application under the current process and which we use as the official TPD discharge date if the Secretary approves the borrower's application. We are making conforming changes throughout the Perkins, FFEL, and Direct Loan regulations to reflect the use of the SSA notice of award for SSDI or SSI benefits in the process.

In accepting the SSA notice of award for SSDI or SSI benefits, we must also preserve the integrity of the TPD process. In the past, we have not used the SSA's SSDI and SSI disability determinations in the TPD discharge process because the SSA's decisions on whether to do a disability review are not binding on the agency. As stated above, the SSA, with some exceptions, conducts an immediate continuing disability review if there is any evidence that raises a question as to whether an individual's disability continues. These exceptions, in 20 CFR 404.1590(h) and (i) and 20 CFR 416.990(h) and (i), are crafted narrowly—for example, if an individual is working and has received SSDI benefits for at least 24 months, the SSA will not start a continuing disability review based solely on an individual's activity if he or she is currently entitled to widow's or widower's insurance benefits based on disability. To maintain the integrity of the TPD process when accepting an SSA notice of award for SSDI or SSI benefits indicating that a borrower's medical review will be conducted in five to seven years as proof of a borrower's disability for title IV discharge purposes, we are adding a provision to the Perkins, FFEL, and Direct Loan program regulations requiring the reinstatement of a borrower's obligation to repay a loan that was discharged due to TPD if, within three years after the date the discharge was granted, the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period contained in the SSA notice of award for SSDI or SSI benefits. This reflects the fact that any continuing disability review done less frequently than five to seven years indicates a change in the borrower's permanent disability status. We are also adding §§ 674.61(b)(7), 682.402(c)(7), and 685.213(b)(8) to require borrowers, during the three-year monitoring period following the date the borrower's loan is discharged, to promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period contained in the SSA notice of award for SSDI or SSI benefits. Again, this would indicate that the SSA has changed the borrower's classification of impairment from permanent impairment-medical improvement not expected to another status.

We do not agree with the commenter who recommended that the Department consider borrowers eligible for a TPD discharge if the borrower was determined by the SSA to be eligible for disability benefits with a continuing disability review schedule of every three years. This review schedule represents the status of nonpermanent impairment under which medical improvement is possible. We do not believe this SSA status rises to the level of severity required to meet the Department's definition of total and permanent disability because this status does not result in death or meet the disability longevity standards in the HEA. If, however, a borrower can provide documentation proving that he or she has been in this nonpermanent impairment status for at least five years, we will consider such evidence in determining whether the borrower has engaged in any substantial gainful activity for a period of at least 60 months (five years) under our current TPD standards. Of course, we will continue to accept TPD applications from borrowers under our current process that requires the borrower's application to contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is TPD as defined in Department of Education regulations. Thus, a borrower who has not received an SSA notice of award for SSDI or SSI benefits may still be eligible for a TPD under other provisions of these final regulations.

Lastly, sections 437(a)(2) and 464(c)(1)(F)(iv) of the HEA authorize the Department to accept disability determinations from the VA when making the determination that a title IV borrower is eligible for a TPD discharge. The HEA does not specifically authorize the Department to accept SSA disability determinations but rather gives the Secretary the authority to provide the appropriate safeguards with regard to TPD. We believe that allowing borrowers to submit an SSA notice of award for SSDI or SSI benefits indicating a five- to seven-year review period as proof of the borrower's TPD in conjunction with other applicable Department regulations provides these safeguards, and, for the reasons explained in this section, is consistent and aligns with the statutory language in the HEA. This change with regard to SSA determinations will further streamline and simplify the TPD process and ease regulatory burden for both applicants and the Department.

Changes: We are making conforming amendatory changes throughout the Perkins, FFEL, and Direct Loan final regulations to incorporate the use of an SSA notice of award for SSDI or SSI benefits in the process of determining whether borrowers have a TPD for the purposes of the discharge of their title IV loans. Specifically, we are providing in §§ 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2) that a borrower may submit an SSA notice of award for SSDI or SSI benefits indicating that the borrower's next scheduled disability review will be within five to seven years as proof of the borrower's TPD.

We are also providing in §§ 674.61(b)(3)(i), 682.402(c)(3)(i), and 685.213(b)(4)(i) that if, after reviewing a borrower's completed application, the Secretary finds that the SSA notice of award for SSDI or SSI benefits indicates that the borrower has a permanent disability, the borrower is considered TPD as of the date the Secretary received the SSA disability notice of award. Final §§ 674.61(b)(3)(iii) and 682.402(c)(3)(iii) provide that in notifying the borrower's lenders that the borrower has been approved for a TPD discharge, the Secretary includes the date the Secretary received the SSA notice of award for SSDI or SSI benefits. Final §§ 674.61(b)(3)(v), 682.402(c)(3)(iii), and 685.213(b)(4)(iii) provide that any payments on a loan received after the date the Secretary received the SSA notice of award for SSDI or SSI benefits are returned to the person who made them. Final §§ 674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv) state that if the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is TPD, the Secretary notifies the borrower and the lender that the discharge has been denied. We are amending §§ 674.61(b)(4), 682.402(c)(4), and 685.213(b)(5) to provide that if a borrower received a title IV loan or TEACH grant before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date the Secretary received the SSA notice of award until the date the Secretary grants a TPD discharge, the processing of the discharge application will be suspended until the borrower returns the disbursement. We are amending §§ 674.61(b)(5), 682.402(c)(5), and 685.213(b)(6) to provide that if a borrower receives a disbursement of a new title IV loan or receives a new TEACH grant made on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge, the Secretary denies the discharge application and collection resumes on the loans. We are amending §§ 674.61(b)(7), 682.402(c)(6), and 685.213(b)(7) to provide that the Secretary reinstates a borrower's obligation to repay a loan that was discharged due to TPD if, within three years after the date the discharge was granted, the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or the borrower's continuing disability review will no longer be the five- to seven-year period contained in the SSA notice of award for SSDI or SSI benefits. We are amending §§ 674.61(b)(7), 682.402(c)(7), and 685.213(b)(8) to require borrowers, during the three-year monitoring period following the date the borrower's loan is discharged, to promptly notify the Secretary if the borrower received a notice from the SSA indicating that the borrower is no longer disabled or the borrower's continuing disability review will no longer be the five- to seven-year period contained in the SSA notice of award for SSDI or SSI benefits. Lastly, we are amending § 682.402(c)(8) to require that once the Secretary approves the borrower's TPD application, and the lender receives a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.

Borrower Representatives (34 CFR 674.61(b)(1), 682.402(c)(1), and 685.213(a)(4))

Comments: One commenter expressed support for the regulations in §§ 674.61(b)(1)(ii), 682.402(c)(1)(iv)(A), and 685.213(a)(4) that provide for a borrower's or veteran's representative to act on behalf of the borrower or veteran, but noted that the regulations refer to a representative as an ''individual.'' The commenter asked if the representative could be a law firm or a legal aid society rather than an individual. The commenter noted that personnel at law firms or legal aid societies change, and it would reduce burden on the borrower if the borrower or veteran did not have to authorize a different individual as a representative as a result of a personnel change at a law firm or legal aid society.

Another commenter asked whether the authorization of a representative had to come from the borrower or veteran. This commenter asked whether a court could authorize a representative to act on behalf of the borrower or veteran.

A third commenter expressed concerns over the Department's current process for sending notices to borrowers' representatives. In this commenter's experience, the Department does not consistently send notices to borrower's representatives. The commenter urged the Department to improve the process for sending such notices as soon as possible.

Discussion: Under the regulations as proposed and finalized, an ''individual'' could include a law firm or legal aid society authorized to act on the borrower's or veteran's behalf without identifying a specific individual within that law firm or legal aid society as the representative. We agree that the authorization could be provided through such means as a Power of Attorney or a court order. The Department will review the validity of such authorizations on a case-by-case basis to determine if the authorization meets applicable legal requirements.

Since October 1, 2010, the Department has taken steps to identify TPD discharge requests in which the borrower listed a representative. When the borrower lists a representative, we send notices related to the TPD discharge application to those borrower representatives, as well as to the borrowers. The Department will continue to do so under the new TPD discharge process. Borrowers who submitted TPD applications prior to October 1, 2010, may request that a borrower representative be added to their account at any time.

Changes: None.

Disability Discharge Application Process (34 CFR 674.61(b)(2), 682.402(c)(2), and 685.213(b))

Comments: One commenter recommended that all of a borrower's loan holders be notified of a borrower's request for a TPD discharge after the borrower submits a single TPD discharge application.

Another commenter recommended that if one lender discharges a borrower's loans due to TPD, all of the borrower's other title IV loans should be automatically discharged.

One commenter recommended that we streamline what the commenter described as an ''extremely daunting'' application process for TPD discharges. Similarly, another commenter requested that the Department make it easier for borrowers with disabilities to seek TPD discharges.

Discussion: The Department appreciates the concerns expressed by the commenters regarding the current TPD discharge process. Consistent with the NPRM, these final regulations reflect the recommendations made by the commenters. Sections 674.61(b)(2), 682.402(c)(2), and 685.213(b) establish a single application process in which the borrower will submit one TPD discharge application to the Department. The Department has one contractor employed to handle TPD discharges and that servicer will be the sole office receiving these TPD discharge applications. Once the Department is notified that the borrower intends to apply for a TPD discharge, we will notify all of the borrower's title IV loan holders and instruct them to suspend collection activity on the borrower's loans for 120 days. If the Department determines that the borrower qualifies for a TPD discharge, the Department will notify all of the borrower's title IV loan holders and instruct them to assign the borrower's loans to the Department. After the Department accepts the loan assignments, the Department will discharge the loans unless the processing of the discharge request is suspended or denied under § 674.61(b)(4), 674.61(b)(5), 682.402(c)(4), 682.402(c)(5), 685.213(b)(5), or 685.213(b)(6). We believe that the streamlined disability discharge application process will alleviate many of the difficulties borrowers have encountered in applying for TPD discharges.

Changes: None.

Comments: Sections 674.61(b)(2)(ii) and 682.402(c)(2)(ii) of the Perkins and FFEL regulations specify that if a borrower notifies the Secretary that the borrower intends to apply for a TPD discharge, the Secretary provides the borrower with the information needed to apply for the discharge and informs the borrower that the suspension of collection activity will end after 120 days if the borrower does not submit the TPD discharge application within that timeframe. One commenter noted that these requirements were not included in proposed § 685.213(b)(1), the comparable section of the Direct Loan regulations, and asked if there was a specific reason for the difference.

Discussion: The Department will provide the same information and notifications required under the Perkins and FFEL regulations to Direct Loan borrowers. We agree that to provide consistency with the Perkins and FFEL regulations these requirements should be included in the Direct Loan regulations as well.

Changes: We have revised § 685.213(b)(1) of the Direct Loan regulations to state that the Secretary will provide borrowers with the information needed to apply for a TPD discharge and inform the borrower that collection will resume on the borrower's loan after 120 days if the borrower does not submit a TPD discharge application.

Comments: One commenter recommended that the Department grant TPD discharges retroactively as of the application date, so that both voluntary and involuntary payments made after that date would be refunded to the borrower.

Discussion: Sections 674.61(b)(3)(i)(A), 682.402(c)(3)(i)(A), and 685.213(b)(4)(i)(A) specify that if the Department determines that the borrower is totally and permanently disabled, the borrower is considered totally and permanently disabled ''as of the date the physician certified the borrower's application.'' It is more beneficial to the borrower to use the physician certification date than the application date, because the physician certification date is earlier than the application date.

Changes: None.

Suspension of Collection Activity (34 CFR 674.61(b)(2)(ii)(C), 674.61(b)(2)(vi), 682.402(c)(2)(ii)(C), 682.402(c)(2)(vi), 685.213(b)(1) and 685.213(b)(3)(i))

Comments: One commenter recommended that the Department cease collection on a borrower's title IV loans upon receipt of a TPD discharge application. Another commenter recommended that the Department confirm that the indefinite suspension of collection activity—which occurs after the Secretary receives the borrower's TPD discharge application—is not dependent on whether the application is complete. A similar comment stated that it is not clear how incomplete applications received after the 120-day suspension of the collection period are treated. This commenter gave an example in which a borrower submits an incomplete application on day 119 of the suspension of collection activity, but does not file the complete application until day 130. The commenter asked if, under those circumstances, collection activity would resume on day 121, or if the incomplete application would be sufficient to keep the suspension of collection in place.

One commenter also noted that §§ 674.61(b)(2)(ix), 682.402(c)(2)(ix), and 685.213(b)(3) describe the contents of the notice that the Department sends to the borrower upon receipt of the disability discharge application. This commenter asked if this notice is sent for incomplete applications, or if it is only sent once the borrower has submitted a completed application.

In addition, some commenters recommended that Treasury Offset Program (TOP) offsets and administrative wage garnishment (AWG) collection activity on the loan cease during the suspension of collection activity.

Discussion: The final regulations in §§ 674.61(b)(2)(ii)(C), 682.402(c)(2)(ii)(C), and 685.213(b)(1) provide that the 120-day suspension of collection begins on the date the borrower notifies the Secretary of the borrower's intent to apply for a TPD discharge. Collection ceases based on a borrower's notification to the Secretary—which could be a verbal notification—and does not require submission of an application.

The Secretary notifies the lenders of the second, indefinite period of suspension of collection activity after the Secretary receives the TPD discharge application, as specified in §§ 674.61(b)(2)(vi), 682.402(c)(2)(vi), and 685.213(b)(3)(i). If the application is incomplete, the Secretary contacts the borrower, or the physician who certified the application, and asks for the missing information, as provided by §§ 674.61(b)(2)(vii), 682.402(c)(2)(vii), and 685.213(b)(3)(ii). The second, indefinite suspension of a collection activity is not dependent on the TPD discharge application containing all of the information needed for the Secretary to conduct the eligibility review, as more detailed medical information regarding the borrower's disability may be collected during the period of suspension of collection activity. However, the application must contain sufficient information for the Secretary to begin review of the application, such as the borrower's identifying information, physician's contact information, and the physician certification required under §§ 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2)(i). The application must be provided to the Secretary within 90 days of the date the physician certifies the application under §§ 674.61(b)(2)(v), 682.402(c)(2)(v), and 685.213(b)(3). If the application arrives without the physician certification or certification date, the Secretary cannot determine if the 90-day requirement has been met. An application missing this information would not meet the requirements of §§ 674.61(b)(2)(vi), 682.402(c)(2)(vi), or 685.213(b)(3).

Borrowers who file a TPD discharge application will receive a different notice depending on whether collection activity is suspended. Thus, if the application does not meet the basic requirement of including a physician certification and certification date (unless the borrower submits an application that includes acceptable VA or SSA documentation as proof of the borrower's TPD), the borrower would receive a notice informing the borrower that suspension of collection will not continue. The borrower would receive a notice requesting the missing information, and notifying the borrower that collection activity will resume on the loan if the information is not provided before the end of the 120-day period of suspension.

We discussed the effect of the suspension of collection activity on payments collected through AWG and TOP in the NPRM. The Department disagrees with the recommendation that AWG and TOP payments be included in the suspension of collection activity. Borrowers who apply for a TPD discharge must, by definition, be unable to engage in substantial gainful activity. Thus, these borrowers would not be earning wages and would not generally be subject to AWG. With regard to TOP, given the administrative effort and timing issues associated with suspending TOP, we do not believe it is in the best interests of the taxpayers to suspend TOP based solely on the filing of the TPD discharge application. Notifying the Department of the intent to file a TPD discharge request does not necessarily demonstrate that a borrower is TPD. Suspending TOP based on such a notification might encourage frivolous TPD discharge requests submitted solely to suspend TOP. If a borrower's loan account has been certified for TOP, the Secretary or the guaranty agency is not required to stop TOP offsets while the borrower is preparing to submit the TPD discharge application or during the Secretary's review of the TPD discharge request. The Secretary or the guaranty agency may, however, stop or reduce TOP offsets during this period if it believes such action is warranted under the borrower's circumstances.

Changes: None.

Comments: One commenter expressed concern that the notice of suspension of collection activity from the Department might not reach the appropriate office in the case of a multi-campus system with a central collection office. If the notice of suspension is sent to the specific campus, rather than to the central collection office for all of the campuses, the collection office would not know to suspend collection for a borrower who obtained a Perkins Loan for attendance at the school. The commenter noted that the National Student Loan Data System (NSLDS) listing for such a borrower would show the specific campus as the loan holder, not the central collection office.

Discussion: The Department is aware of the issues that may arise with multi-campus systems with a centralized collection office. Under the new TPD discharge process, if a borrower notifies us of the intent to apply for a TPD discharge, we will contact the borrower's title IV loan holders listed on the NSLDS. Unless the loan has been assigned to the Department, the holder of a Perkins Loan is always the school that awarded the loan to the borrower.

As we implement the new streamlined TPD discharge process, the Department will work with multi-campus systems that have centralized collection offices to find strategies to address this problem.

Changes: None.

Comments: One commenter stated that during the negotiated rulemaking sessions non-Federal negotiators proposed modifying the administrative forbearance regulations for the FFEL program to allow guaranty agencies to retroactively grant administrative forbearances to borrowers. This would eliminate delinquencies occurring before the borrower notified the Department of the intent to apply for a TPD discharge. When the Department decided to split the proposed regulations into two separate regulatory packages, the administrative forbearance provision was not included in the NPRM to these final regulations. The commenter noted that including the administrative forbearance provision in a subsequent rulemaking will create a period of time where guaranty agencies will not be able to eliminate a prior delinquency with an administrative forbearance. Delinquent borrowers whose 120-day suspension period expires, or whose TPD discharge application is denied before the effective date of the second set of regulations resulting from these negotiations, will resume repayment after the suspension periods at the same delinquency status. This commenter recommended that the Department provide clear guidance that would allow a borrower to exit a TPD suspension period in a nondelinquent status, regardless of the status of the loan at the time the suspension of collection activity began, until the changes to the administrative forbearance regulations are published and are in effect.

Discussion: The NPRM that would contain this revision to the administrative forbearance provisions has not yet been published. Consequently, there has been no opportunity for public comment on an NPRM that includes this revision. The Department believes that it would be inappropriate to establish such an administrative forbearance through subregulatory guidance prior to publication of the proposed regulatory change in an NPRM, receipt of public comment, and publication of a final regulation. In addition, we have no evidence that this has created a significant problem for borrowers seeking TPD discharges under our current regulations.

Changes: None.

TPD Discharge Application Denial and Re-evaluation (34 CFR 674.61(b)(3)(vi), 674.61(b)(3)(vii), 682.402(c)(3)(v), 682.402(c)(3)(vi), 685.213(b)(4)(iv), and 685.213(b)(4)(v))

Comments: One commenter asked if the references in proposed §§ 674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv) to the ''certification provided by the borrower'' meant the physician's certification on the TPD application form. If so, the commenter asked us to change the reference to the ''physician's certification.'' The commenter also asked us to make the same change in the corresponding regulations for the veteran's disability discharge process.

Discussion: The references to a ''certification provided by the borrower'' in proposed §§ 674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv) do refer to the physician certification. We agree with the commenter and have revised these provisions in the final regulations to make this explicit. However, the corresponding language in §§ 674.61(c), 682.402(c)(9), and 685.213(c) covering the veteran's disability discharge process refers to documentation from the Department of Veteran's Affairs not to a physician's certification, and does not need to be revised.

Changes: We have replaced ''certification provided by the borrower'' with ''physician's certification'' in §§ 674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv).

Comments: The proposed regulations in §§ 674.61(b)(3)(vii), 682.402(c)(3)(vi), and 685.213(b)(4)(v) would allow a borrower to request a re-evaluation of the borrower's TPD discharge application within 12 months of receiving the Secretary's decision denying the application. The proposed rules specified that the request for a re-evaluation must include information that was not available at the time of the borrower's prior application. One commenter noted, however, that the information might have been available at the time of the prior application but might not have been included in the application for any number of reasons. The commenter recommended replacing the words ''not available'' with ''not included'' for these regulatory provisions.

In addition, commenters asked the Department to confirm that a FFEL or Perkins loan holder will not provide a new period of suspension of collection activity during the re-evaluation period, unless advised otherwise by the Department.

Discussion: We agree with the recommendation to revise the language, although, since detailed information is not included in the TPD discharge application itself, we have revised the new language.

In response to the second comment noted above, we confirm that the borrower does not receive a second period of suspension when a TPD discharge is being re-evaluated.

Changes: We have replaced ''not available'' with ''not provided to the Secretary in connection with the prior application'' in §§ 674.61(b)(3)(vii), 682.402(c)(3)(vi), and 685.213(b)(4)(v) of the final regulations.

Treatment of Disbursements of Title IV Loans and TEACH Grants or Receipt of New Title IV Loans and TEACH Grants After Date of Physician's Certification (34 CFR 674.61(b)(4) and (b)(5), 682.402(c)(4) and (c)(5), and 685.213(b)(5) and (b)(6))

Comments: The proposed regulations in §§ 674.61(b)(4), 682.402(c)(4), and 685.213(b)(5) stipulated that if a borrower receives a title IV loan or TEACH grant before the date the physician certified the TPD discharge application, and disbursement of the loan or grant is made after the date of the physician's certification and before the date the loan is discharged, the processing of the discharge request is suspended until the borrower returns the disbursement. One commenter noted that this regulatory requirement could be easily misunderstood. The commenter asked the Department to clarify what it means by a borrower ''receiving'' a loan or grant prior to the loan or grant being disbursed. The commenter asked if this requirement refers to a loan that is partially disbursed before the physician's certification, and a subsequent disbursement is made after the date of the certification. Alternatively, the commenter asked if by ''received'' the Department means originated or awarded.

Discussion: The commenter's second interpretation is correct. In the context of these regulations, we are referring to a situation in which the loan or grant has been originated or awarded prior to the physician certification date. The provision is intended to apply to situations in which a student has established eligibility for a title IV loan or TEACH grant, the loan or grant is approved, and the process for disbursing the funds has started. The Department believes that a student in this situation should not be denied the TPD discharge. However, the student must return the disbursed funds before the TPD discharge may be granted.

Changes: None.

Comments: The proposed regulations in §§ 674.61(b)(5), 682.402(c)(5), and 685.213(b)(6) provided that if a borrower receives a disbursement of a new title IV loan or receives a TEACH grant made on or after the date the physician certified the TPD discharge application, the Department denies the TPD discharge application and collection resumes on the borrower's loans. One commenter asked if this refers to situations in which a title IV loan or TEACH grant was originated or awarded on or after the date of the physician's certification and is disbursed before the date the discharge is granted.

Discussion: The commenter's understanding of the provision is correct. This provision is intended to address borrowers who actively request or apply for a new title IV loan or TEACH grant after the date of the physician's certification. In applying for a loan or requesting a TEACH grant the student commits to repay the loan or perform the required teaching service. This commitment contradicts the borrower's claim in the TPD discharge application that the borrower is too disabled to work. Borrowers seeking a discharge on existing loans while taking out new loans should not receive the benefit of a TPD discharge.

Changes: None.

Conditions for Reinstatement of a Loan and Borrower's Responsibilities After a Total and Permanent Disability Discharge (34 CFR 674.61(b)(6), 674.61(b)(7), 682.402(c)(6), 682.402(c)(7), 685.213(b)(7), and 685.213(b)(8))

Comments: The regulations in §§ 674.61(b)(6)(i)(A), 682.402(c)(6)(i)(A), and 685.213(b)(7)(i)(A) provide that a loan that has been discharged based on the borrower's TPD is reinstated if, within three years after the discharge date, the borrower has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two. One commenter recommended that, in some cases, the Department should examine a borrower's income for the three years prior to the TPD discharge, rather than the three years after the discharge.

Another commenter recommended that the Department allow part-time work for disability discharge recipients. A third commenter echoed this comment, and added that full-time work on a short-term basis should also be allowed.

In addition, the proposed regulations in §§ 674.61(b)(7), 682.402(c)(7), and 685.213(b)(8) provided that, for a three-year period after the borrower receives a TPD discharge, the borrower must: notify the Department of any changes in address or telephone number; notify the Department if the borrower's annual earnings exceed the poverty level; and provide the Department, upon request, with documentation of the borrower's earnings. One commenter asked what the consequences are for a borrower who does not provide the requested documentation.

Discussion: Under both the current and proposed TPD discharge regulations and these final regulations, the monitoring of the borrower's income only occurs after the discharge has been granted. The post-discharge monitoring of a borrower's earned income is required by section 437 of the HEA.

The proposed and final regulations in §§ 674.61(b)(6), 682.402(c)(6), and 685.213(b)(7) treat earnings during the three-year post-discharge monitoring period as an indicator that a borrower is no longer TPD. A borrower's loans are reinstated if the borrower's annual earnings are greater than 100 percent of the poverty line for a family of two, as published annually by the Department of Health and Human Services. This standard allows the borrower to attempt part-time or short-term full-time work without raising a question about the borrower's disability, if the earnings from such work for the year do not exceed the threshold. Earnings in excess of these amounts indicate that the borrower is sufficiently able to engage in substantial gainful activity, and does not meet the definition of ''totally and permanently disabled.''

A borrower who does not provide the required documentation (particularly income documentation) will have his or her loans reinstated and will be required to resume payment on the loan.

Changes: None.

FFEL Lender and Guaranty Agency Actions (34 CFR 682.402(c)(8), 682.402(g)(2), and 682.402(k)(2))

Comments: Several commenters requested that the Department state in this preamble to the final regulations that the guarantor of the loans for which the borrower has submitted a TPD discharge application may request and receive from the Department, on a case-by-case basis, any information that may be needed to assist the borrower during the TPD discharge process. These commenters noted that the guaranty agency may be a trusted contact for a disabled borrower, and may have worked with the borrower in the past with respect to default prevention activities or ombudsman interactions.

Discussion: These regulations are intended to centralize the TPD discharge process and to enable borrowers to receive TPD discharges more easily. One way that the regulations accomplish this is by minimizing the role of guaranty agencies and loan holders in the TPD discharge process. We do not envision guaranty agencies or lenders having a significant role in the processing of TPD discharge requests under the new process. Because the role of guaranty agencies will be limited, we do not believe that it is necessary for guaranty agencies to receive information from the Department regarding specific TPD discharge requests beyond the documentation already specified in the regulations.

We note that an individual borrower who considers a guaranty agency to be a trusted contact may choose to provide a copy of the TPD discharge application or any communications that the borrower receives from the Department to the guaranty agency.

Changes: None.

Comments: Some commenters noted that the regulatory language agreed to during the negotiated rulemaking process would modify the current requirements for a guaranty agency to file a disability claim. Currently, § 682.402(g)(1)(iv) requires a guaranty agency to include a copy of the certified TPD discharge application with the disability claim. Under the new TPD discharge process in this final rule, the guaranty agency will not receive a copy of the TPD discharge application. Under final § 682.402(g)(1)(iv), the guaranty agency will only receive the notice from the Department informing the lender that the borrower is eligible for a TPD discharge. The commenters noted that the regulatory language approved during the negotiated rulemaking process would replace the reference to the TPD discharge form. The commenters stated that proposed § 682.402(g)(1)(iv) incorrectly retained the requirement that the TPD discharge application be submitted with the disability claim. The commenters requested that the final regulations be modified to conform to the agreement reached during negotiations.

These commenters also requested that the final regulations modify Appendix D of 34 CFR Part 682 to remove language stating that the Department does not reimburse a guaranty agency for a disability claim if the lender has violated due diligence or timely filing requirements. The commenters viewed this as a conforming change to the proposed regulations.

Some commenters recommended that the Department revise proposed § 682.402(c)(8)(i)(E) that established assignment deadlines for loans held by the guaranty agency at the time the borrower applies for a disability discharge. The NPRM proposed to require the guaranty agency to assign the loan to the Secretary within 45 days of the date that the guaranty agency receives notice that the borrower qualifies for a TPD discharge. The commenters recommended that the loan be assigned within 45 days of the date the Secretary pays the remaining disability claim amount to the guaranty agency.

Discussion: The language approved by the negotiating committee and referenced by the commenters was included in the NPRM. However, in finalizing the NPRM, we did not replace § 682.402(g)(1)(iv) in its entirety. Instead, we amended that section through an instruction. The revision is reflected as instruction 6.B at 77 FR 42133. The instruction that was included in the NPRM, and is included in these final regulations, does not need to be modified.

During the negotiated rulemaking process, non-Federal negotiators did not suggest that the Department waive the due diligence requirements for disability discharge claims under the new process for TPD discharges. This change was not discussed during the negotiated rulemaking process or agreed to by the Department. Further, the NPRM did not propose changing the current regulatory language in § 682.402(k)(2) stating that the Department only pays a disability claim to a guaranty agency ''after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement'' or the current requirement in § 682.402(k)(2)(v) that the Department only reimburses a guaranty agency on a disability claim if ''the guaranty agency has exercised due diligence in the collection of the loan.'' Nor did the NPRM propose changes to current § 682.406(a), which specifies that a guaranty agency only receives a reinsurance payment from the Department on a loan ''if the lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency.'' The changes to Appendix D that the commenters request as a conforming change with the NPRM would actually be inconsistent with the proposed and final regulations.

In these final regulations, § 682.402(c)(3)(iii) states that, after the Department determines that a borrower is totally and permanently disabled, the Department ''directs each lender to submit a disability claim to the guaranty agency * * * .'' Section 682.402(c)(8)(i)(B) requires a guaranty agency to pay the claim ''if the claim satisfies the requirements of § 682.402(g)(1).'' To clarify that the disability claim must meet all of the due diligence requirements, we have modified this language to specify that the claim must meet the requirements of § 682.406 as well.

The purpose of these regulations is to streamline and speed up the process for granting TPD discharges as much as possible. Therefore, we decline the recommendation from the guaranty agencies that they not be required to assign a TPD claim to the Department until the remaining reinsurance claim amount has been paid by the Department. The borrower's discharge should not be delayed while the Department and the guaranty agencies complete their financial transactions. We note that, under the final regulations, the guaranty agency would have 45 days to submit a claim to the Department for reimbursement before it is required to assign the loan to the Department.

Changes: We have revised §§ 682.402(c)(8)(i)(B) and 682.402(c)(9)(xii)(B) to state that a guaranty agency must pay a disability claim if the claim satisfies the requirements of §§ 682.402(g)(1) and 682.406.

Implementation and Forms Development

Comments: Some commenters urged the Department to implement the proposed reforms to the TPD discharge process earlier than the July 1, 2013, effective date of the regulations, to the extent possible.

Conversely, another commenter recommended that the revised TPD discharge application not be made available to borrowers before the July 1, 2013, effective date to minimize borrower confusion and ensure an orderly transition to the new discharge process. In addition, the latter commenter recommended that the Department be prepared to accept both versions of the TPD discharge application—the current version and the revised version—as of the July 1, 2013, effective date, so that borrowers who have completed the current version of the TPD discharge application may also benefit from the streamlined TPD discharge process.

One commenter recommended that the Department implement the third-party release form that borrowers would use to identify borrower representatives as soon as possible.

Discussion: Due to the complexity of the changes made by these final regulations, the Department has determined that implementation of the new TPD discharge process before the July 1, 2013, effective date is not feasible. The new process will require extensive systems and process changes by the Department, guaranty agencies, and loan holders and servicers before the new TPD discharge process can be implemented.

The Department does not address implementation of forms in final regulations. Forms developed or revised as a result of these final regulations will be made available for public comment through the Paperwork Reduction Act forms clearance process. After the forms have been approved by OMB, the forms will be made available to program participants through Dear Colleague Letters or Electronic Announcements. Deadline dates for forms implementation, and any transition period between the current TPD discharge application and the new TPD discharge application, will be announced in the Dear Colleague Letter or Electronic Announcement implementing the new and revised TPD discharge forms.

Changes: None.

Additional Comments

Comments: Several commenters stated that navigating the TPD discharge process is stressful and urged the Department to streamline the process by providing a one-stop Web site where borrowers can get information about the process.

One commenter recommended that the Department forgive loans of individuals caring for permanently disabled veterans and to accept the VA's determination of permanent disability.

One commenter asked the Department to allow borrowers who are experiencing dire economic hardship because of health and disability issues to modify their loan terms or restructure their loans to ease the burden of repayment.

Discussion: The Department maintains a TPD discharge Web site at the following link: *http://www.disabilitydischarge.com/Pages/General.aspx?id=80*

The Web site provides information on the TPD discharge process for borrowers, loan holders, physicians, and veterans. The Web site allows individuals to set up user accounts and can be used to help borrowers, loan holders, and physicians navigate the TPD discharge process. The Web site will be updated with new information, revised forms, and other information that will be helpful to borrowers as the new streamlined process is implemented.

The recommendations that the Department forgive loans for individuals caring for disabled veterans and allow borrowers who are experiencing financial hardship due to health or disability issues to modify or restructure their title IV loans are outside the Department's statutory authority. However, we note that there are other avenues for borrowers who are experiencing dire economic circumstances due to health issues or disabilities. Economic hardship deferments, unemployment deferments, and forbearances are generally available to borrowers in the Perkins, FFEL, and Direct Loan programs. In addition, Direct Loan and FFEL borrowers can use the income-based or income-contingent repayment plans discussed elsewhere in this preamble.

Changes: None.

Income-Based and Income-Contingent Repayment Plans: General Comments

Comments: One commenter suggested that we adopt more consumer-friendly names for the two income-contingent repayment plans designated as ''ICR–A'' and ''ICR–B'' in proposed § 685.209. In light of the fact that the President's ''Pay As You Earn'' repayment initiative has been widely publicized, the commenter suggested that it may be helpful to clarify for borrowers that the ICR–A repayment plan is in fact the Pay As You Earn initiative.

Another commenter strongly urged the Department to consider using a more descriptive and less confusing name than ICR–A and suggested ''Pay As You Earn'' as an appropriate alternative. This commenter believed that borrowers will have difficulty understanding the differences between the similarly named income-driven repayment plans and noted that the proposed ICR–A plan is much more like the current IBR plan than the proposed ICR–B plan.

The majority of commenters expressed strong support for the Secretary's proposed regulations, especially the proposed implementation of the President's ''Pay As You Earn'' repayment initiative as a new type of income-contingent repayment plan, in light of rising student loan debt and the difficulty some borrowers experience repaying their student loans. Many of the commenters noted that the proposed regulations would make it easier and more affordable for Federal student loan borrowers to repay their loans. A few commenters stated that all of the income-driven repayment plans should be discontinued because they believed that these plans are a poor use of taxpayer funds, encourage students to enroll in substandard educational programs, encourage students to borrow more than necessary, and absolve borrowers of their responsibility to repay their student loans in full.

Discussion: During the negotiated rulemaking sessions we invited suggestions for naming the two income-contingent repayment plans described in proposed § 685.209, but did not receive any recommendations at that time. We explained in the NPRM that the proposed regulations would create a new income-contingent repayment plan based on the President's Pay As You Earn initiative that would be called the ICR–A plan, and that the existing income-contingent repayment plan would be retained, with certain changes, as the ICR–B plan. We agree with the commenters' recommendation that we adopt more descriptive and consumer-friendly names for these repayment plans and believe the most appropriate approach would be to use a distinctive name for the new plan that is based on the Pay As You Earn initiative and leave the name of the current income-contingent repayment plan unchanged.

The Department appreciates the numerous comments we received in support of the proposed regulations. With regard to the comments recommending that the income-driven repayment plans be discontinued, we note that the IBR and ICR plans were established by Congress to assist borrowers in repaying their student loan debt, and the Pay As You Earn repayment plan is based on a presidential initiative to help borrowers reduce their monthly student loan payments. We believe these repayment options provide a significant benefit to borrowers and taxpayers by helping borrowers better manage their student loan debt and avoid default.

Changes: We have revised § 685.209 by redesignating the plan called ''ICR–A'' in the NPRM as the ''Pay As You Earn repayment plan,'' and by redesignating the plan called ''ICR–B'' in the NPRM as the ''income-contingent repayment (ICR) plan.'' References to the ''income-contingent repayment plans'' in other sections of the Direct Loan program regulations may mean either the Pay As You Earn repayment plan or the ICR plan, since both plans are presented in § 685.209 as income-contingent repayment plans. Where it is necessary to distinguish between the two plans in other sections of the Direct Loan program regulations, the regulations refer to the income-contingent repayment plan described in § 685.209(a) (the Pay As You Earn repayment plan) or the income-contingent repayment plan described in § 685.209(b) (the ICR plan).

Comments: Many individual commenters suggested various changes to the proposed regulations that would require amendments to the HEA. These recommended changes included—

(1) Allowing private education loans to be repaid under the IBR and ICR plans;

(2) Allowing private education loans to be consolidated together with Federal student loans;

(3) Allowing parent PLUS loan borrowers to repay their loans under the IBR and ICR plans;

(4) Making changes to the IBR plan that will be available to new borrowers on or after July 1, 2014, available to all borrowers;

(5) Not taxing loan amounts forgiven under the IBR and ICR plans;

(6) Extending the length of time that borrowers with disabilities are eligible for the interest subsidy provided in the IBR and proposed Pay As You Earn repayment plans;

(7) Reducing the maximum IBR payment amount to five percent of adjusted gross income (AGI);

(8) Counting payments made prior to entering IBR toward the 25-year IBR loan forgiveness period;

(9) Allowing borrowers to separate joint consolidation loans in cases of divorce, separation, spousal abandonment, or remarriage;

(10) Allowing defaulted borrowers to repay under IBR;

(11) Providing restructured loans for disabled borrowers and for borrowers that meet other criteria;

(12) Reducing the interest rates charged on Federal student loans, or charging no interest; and

(13) Basing the determination of PFH for IBR eligibility purposes on factors other than eligible loan debt, AGI, and family size; some of the suggested factors that commenters recommended for consideration in determining whether a borrower has a PFH and other suggested changes were—

• Each borrower's unique individual expenses;
• Regional cost-of-living differences;
• Use of net pay or net taxable income, rather than AGI;
• Modification of the poverty guidelines currently in use;
• Adjustment of PFH determinations based on whether the borrower is listed as the ''head of household'' on his or her income tax return;
• Inclusion of private student loan debt; and
• Lower-income qualifications for PFH status.

Discussion: We appreciate the many comments we received recommending changes that the commenters believe would benefit borrowers and improve the administration of the title IV loan programs. However, the suggested changes would require Congress to make changes to the HEA or other laws. The following paragraphs identify the statutory provisions that limit the Department's ability to adopt the recommended changes in items (1) through (13).

With respect to items (1) and (2), the HEA does not govern the terms and conditions of private education loans. Congress could not legally require that the IBR or ICR plans be made available for private education loans or provide for the consolidation of such loans into a Direct Consolidation Loan because it cannot change the terms of private contracts.

With respect to item (3), section 493C(b)(1) of the HEA limits eligibility for IBR to ''a borrower of any loan made, insured, or guaranteed under part B or D (other than an excepted PLUS loan or excepted consolidation loan).'' Sections 493C(a)(1) and (a)(2) of the HEA define ''excepted PLUS loan'' and ''excepted consolidation loan,'' respectively, as a PLUS loan made to a parent on behalf of a dependent student, or a consolidation loan that repays a PLUS loan made to a parent on behalf of a dependent student. The Pay As You Earn repayment plan is based on the IBR plan and includes the same restrictions on the types of loans that may be repaid under the plan. Section 455(d)(1)(D) of the HEA provides that the income-contingent repayment plan is not available to borrowers of Direct PLUS Loans made on behalf of dependent students. Therefore, the HEA does not permit repayment of PLUS loans made to parent borrowers through the IBR or ICR plans.

With respect to item (4), section 493C(e) of the HEA provides that the changes to the IBR plan that reduce the maximum repayment timeframe from 25 years to 20 years and the maximum income-based payment amount from 15 percent of discretionary income to 10 percent of discretionary income are only available to ''new borrowers on and after July 1, 2014.''

With respect to item (5), 26 U.S.C. 108(f) provides that an individual's gross income for tax purposes does not include loan amounts forgiven under certain types of loan discharge programs if the loan amount was discharged on the basis that the borrower ''worked for a certain period of time in certain professions.'' Based on the Internal Revenue Service's (IRS) interpretation of this statutory provision, loan amounts forgiven under the IBR, ICR, and Pay As You Earn repayment plans must be treated as taxable income. The tax implications of loan forgiveness are addressed in the Internal Revenue Code and the regulations of the IRS, and the Department has no authority to address this issue.

With respect to item (6), section 493C(b)(3) of the HEA provides that if the calculated income-based payment for a borrower repaying under the IBR plan does not cover all of the monthly interest that accrues, the Secretary pays the remaining interest on the borrower's subsidized loans for a period not to exceed three years from the date the borrower entered repayment under the IBR plan, excluding periods of economic hardship deferment. The Department does not have the authority under the HEA to extend this maximum three-year interest subsidy period.

With respect to item (7), section 493C(a)(3)(B) of the HEA provides that a PFH exists when the annual amount due on a borrower's total outstanding eligible loan debt, as calculated under a standard repayment plan with a 10-year repayment period, exceeds 15 percent of the difference between the borrower's, and the borrower's spouse's (if applicable), AGI and 150 percent of the poverty line applicable to the borrower's family size. The Department does not have the authority to change this statutory provision.

With respect to item (8), section 493C(b)(7)(B) of the HEA specifies the types of qualifying payments that are counted toward the maximum 25-year IBR repayment period. Payments made prior to entering the IBR repayment plan are not included. The Secretary does not have the authority under the law to count other types of payments toward the IBR repayment period.

With respect to item (9), section 428C(a)(3)(C) of the HEA provided that married borrowers are jointly and severally liable for the repayment of a joint consolidation loan ''without regard to any subsequent change that may occur in the couple's marital status.'' As part of the Higher Education Reconciliation Act of 2005 (Pub. L. 109–171), Congress prohibited the origination of any new joint consolidation loans, and as a consequence of this action, section 428C(a)(3)(C) was removed from the HEA. However, for those joint consolidation loans that are still in repayment, this statutory provision continues to apply. Without a statutory change, the Department cannot permit the separation of a joint consolidation loan for the reasons suggested by the commenter.

With respect to item (10), section 493C(b)(1) of the HEA permits a borrower to elect IBR if the borrower has a PFH, ''whether or not the borrower's loan has been submitted to a guaranty agency for default aversion or had been in default.'' The HEOA amended the prior version of section 493C(b)(1) by replacing the term ''or is already in default'' with ''or had been in default.'' This change in the IBR eligibility criteria served to prohibit defaulted borrowers from participating in IBR, and a statutory change would be required to once again allow defaulted borrowers to select the IBR plan.

With respect to item (11), no provision of the HEA permits the Secretary to restructure loans for any borrowers.

With respect to recommendation (12), the interest rates charged on loans made under the FFEL and Direct Loan programs are established by statute in sections 427A and 455(b) of the HEA, respectively. The Department does not have the authority to change these statutory provisions.

With respect to recommendation (13), section 493C(a)(3)(B) of the HEA specifies the standard for determining whether a borrower has a PFH, as discussed earlier in connection with item (7). Absent a statutory change, the Department is unable to make such changes.

Changes: None.

Use of Electronic and Internet-Based Processes for Borrowers Repaying Under the IBR, ICR, and Pay As You Earn Repayment Plans

Comments: Many commenters requested that the Department make the initial application and annual renewal process for the IBR, ICR, and Pay As You Earn repayment plans more efficient through the use of electronic, automated, or Internet-based methods. Some commenters requested that the Department develop an interface with the IRS to facilitate a borrower accessing and providing required income information electronically to the borrower's loan servicer.

Discussion: The Department has recently made an electronic application for the IBR plan available to borrowers. Specifically, the Department's StudentLoans.gov Web site has been modified to allow borrowers to login to that site with their Federal Student Aid Personal Identification Number (PIN), apply for the IBR plan, populate their application with the AGI on file with the IRS, and submit it electronically to their Federal loan servicer. Borrowers may also use this process to annually provide updated AGI information, as required by the IBR regulations.

Initially, this enhanced functionality will only be available to borrowers with Direct Loans and FFEL loans that are held by the Department, or with commercially-held FFEL loans that are serviced by an entity that has an association with certain members of the Department's federal loan servicer team, who wish to apply to repay under the IBR plan. The Department plans, however, to add a comparable process for the ICR and Pay As You Earn repayment plans in the near future. In addition, the Department also intends to eventually establish the electronic exchange relationships necessary for all servicers of commercially-held FFEL loans to participate in the electronic application process.

The Department has also taken steps to modify and combine the various forms that borrowers currently use to request the IBR and ICR plans into a single standardized form borrowers can use to apply for the IBR, ICR, and Pay As You Earn repayment plans and provide alternative documentation of income, if appropriate, regardless of the type of loan or loan holder. The Department has greatly simplified the form to make it easier to understand and complete. The Department anticipates that the form will become available for borrowers to use by the end of 2012.

Changes: None.

Comments: Many commenters suggested that the Department should expand eligibility for the Pay As You Earn repayment plan (the proposed ICR–A plan) to include borrowers other than new borrowers as of October 1, 2007 who receive Direct Loan disbursements on or after October 1, 2011. Many of these commenters felt that it was unfair to exclude certain borrowers from the Pay As You Earn repayment plan. The commenters argued that all Federal student loan borrowers should have access to all repayment plans.

One commenter suggested basing the eligibility criteria for the Pay As You Earn repayment plan on academic or award years rather than on the fiscal year approach taken in the proposed regulations. The commenter stated that using fiscal years may be confusing to borrowers, who are more familiar with award or academic years. The commenter suggested that if budgetary constraints preclude using an award year approach, we consider using calendar years 2008 and 2012 (January 1, 2008 and January 1, 2012, respectively) instead.

Discussion: In implementing the President's Pay As You Earn repayment initiative, the Department attempted to provide the benefit of the initiative to as many borrowers as budgetary constraints would allow. While the Department understands the view of some of the commenters that the Pay As You Earn repayment plan should be available to all Federal student loan borrowers, expanding eligibility would constitute a significant cost to the government. Similarly, defining ''new borrower'' on the basis of award years rather than fiscal years would result in significant additional costs.

We understand the commenter's concern that some borrowers may be confused by the use of fiscal year dates and appreciate the recommendation to use calendar years instead. However, the Department believes it is preferable to make the Pay As You Earn repayment plan available to as many borrowers as possible. Using calendar years to define the group of eligible borrowers would exclude borrowers from the Pay As You Earn repayment plan who would have otherwise been eligible under the proposed regulations. For example, a borrower who received the first disbursement of a loan in the fall of 2008 and graduated in three and a half years, with a final loan disbursement occurring on October 15, 2011, would not be eligible for the Pay As You Earn repayment plan if the regulations required the receipt of a Direct Loan disbursement on or after January 1, 2012, rather than on or after October 1, 2011, as in the proposed regulations. Similarly, an otherwise eligible borrower who received the first loan in November 2007 would qualify under the proposed regulations, but would be ineligible if the regulations defined new borrower as someone who had no outstanding loan balance as of January 1, 2008. We believe making the Pay As You Earn repayment plan available to as many borrowers as possible is preferable to using dates that may be less confusing, but that would limit eligibility.

Changes: None.

Income-Based and Income-Contingent Repayment Plans: Initial Determination of Eligibility, Annual Income Documentation Requirements, and Associated Notices

Comments: One commenter noted that under proposed § 682.215(e)(9), FFEL program loan holders may grant forbearance under certain circumstances to a borrower repaying under the IBR plan whose required income documentation is received more than 10 days after the specified annual deadline, and whose loan payments are overdue or would be due at the time the borrower's new income-based monthly payment amount is determined. The commenter further noted that in the preamble to the NPRM the Secretary indicated that proposed § 685.221(e)(9)(i) would establish the same requirement in the Direct Loan program. However, the commenter pointed out that proposed § 685.221(e)(9)(i) (and also proposed §§ 685.209(b)(3)(vi)(F)(*1*) and 685.209(a)(5)(ix)(A) for the ICR and Pay As You Earn repayment plans, respectively) states that the Secretary ''grants forbearance'' whereas the corresponding FFEL program regulation states that the loan holder ''may grant forbearance.'' The commenter believed that the different language in the proposed regulations would require the Secretary to grant forbearance in the Direct Loan program, but make the granting of the forbearance optional on the part of the loan holder in the FFEL program. The commenter recommended that the Department revise § 682.215(e)(9) to require FFEL loan holders to grant the forbearance under the specified conditions.

The commenter also recommended that the Department expand the conditions under which the forbearance described in proposed §§ 682.215(e)(9), 685.209(a)(5)(ix)(A), 685.209(b)(3)(vi)(F)(*1*), and 685.221(e)(9)(i) is granted. Under the proposed regulations, this forbearance is granted only if the borrower's new calculated monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. The commenter recommended that the Department revise the regulations to include borrowers whose new calculated monthly payment amount is equal to the borrower's previously calculated monthly payment amount. The commenter believed that the forbearance should be available to a borrower whose new calculated monthly payment is equal to the borrower's previous monthly payment amount. The commenter suggested that a borrower whose financial situation has not improved would likely have trouble paying the ''permanent standard'' payment amount (which is not based on the borrower's income) that applies when a borrower's income documentation is not received within 10 days of the specified annual deadline.

Finally, the commenter recommended that the regulations be revised to provide that the forbearance described in proposed §§ 682.215(e)(9), 685.209(a)(5)(ix)(A), 685.209(b)(3)(vi)(F)(*1*), and 685.221(e)(9)(i) could be granted at the discretion of the Secretary or loan holder under conditions other than those specified in the proposed regulations, if a borrower is experiencing exceptional circumstances such as personal or family health emergencies that prevented the borrower from submitting the required income documentation on time.

Discussion: With regard to the recommendation that § 682.215(e)(9) be revised to require FFEL loan holders to grant forbearance (instead of specifying that the loan holder ''may grant forbearance''), the words ''may grant'' indicate that FFEL program loan holders are authorized to grant this forbearance. The Department does not have the authority to require loan holders to grant forbearance under conditions not provided for in section 428(c)(3)(A) of the HEA. However, the Department expects that loan holders will grant forbearance to FFEL program borrowers under the conditions specified in § 682.215(e)(9).

The Department declines to modify the forbearance regulations to provide a forbearance to a borrower who submits the required income information more than 10 days after the specified annual deadline if the borrower's new calculated monthly payment amount is equal to the borrower's previously calculated monthly payment amount. As discussed in the preamble to the NPRM, the Department believes it is appropriate to allow a forbearance under limited circumstances, namely if a borrower's new calculated monthly payment amount is $0.00 or is less than the borrower's prior calculated monthly payment amount. A new calculated payment that is $0.00 or less than the prior calculated payment amount may indicate a worsening of the borrower's financial circumstances that may have contributed to the borrower becoming delinquent or failing to provide the required documentation in a timely manner. However, it is not reasonable to attribute delinquent payments or failure to meet the documentation deadline to a borrower's worsening financial situation if the borrower's new calculated payment amount is the same as the previously calculated payment amount, as this would suggest that there has been no significant change in the borrower's financial circumstances.

Similarly, the Department declines to make the recommended change that would allow forbearance to be granted under conditions other than those specified in §§ 682.215(e)(9), 685.209(a)(5)(ix)(A), 685.209(b)(3)(vi)(F)(*1*), and 685.221(e)(9)(i) if there are exceptional circumstances. This approach would be inconsistent with the Department's intent to allow forbearance for borrowers who fail to submit income documentation in a timely manner and who are delinquent in making loan payments only under limited circumstances, and could result in inconsistent treatment of borrowers. Finally, we note that a borrower who is having difficulty making payments but who does not qualify for forbearance under §§ 682.215(e)(9), 685.209(a)(5)(ix)(A), 685.209(b)(3)(vi)(F)(*1*), and 685.221(e)(9)(i) would have the option of requesting forbearance under §§ 682.211(a)(1) or 685.205(a)(1).

Changes: None.

Comments: One commenter recommended that the Department modify the proposed regulations in §§ 682.215(e)(2), 685.209(a)(5)(ii), and 685.221(e)(2) governing the written notification that is sent to a borrower after the Secretary or the loan holder has determined that the borrower has a PFH to qualify for the IBR or Pay As You Earn repayment plan. Under the proposed regulations, this written notification would inform the borrower of the requirement for the borrower to provide certain information annually and would explain that the borrower will be notified in advance of the date by which the Secretary or loan holder must receive this information. The notification does not include the actual deadline date; the specific deadline by which the information must be received is provided to the borrower in a separate notification described in §§ 682.215(e)(3)(i), 685.209(a)(5)(iii), and 685.221(e)(3)(i) that is sent closer to the deadline date. The commenter asked the Department to modify proposed §§ 682.215(e)(2), 685.209(a)(5)(ii), and 685.221(e)(2) to require that the first written notification include the specific annual deadline by which the required information must be received, instead of simply explaining that the borrower will be notified in advance of the deadline date. The commenter believed that including the actual deadline date in the earlier notification would help borrowers plan ahead for submitting the required information in a timely manner.

Discussion: As discussed in the preamble to the NPRM, the Department initially proposed during the negotiated rulemaking sessions that the annual notification reminding borrowers repaying under the IBR and Pay As You Earn repayment plans of the upcoming deadline date for submitting income documentation would be sent no later than 60 days before the annual deadline date established by the Secretary or the loan holder. However, some non-Federal negotiators were concerned that this approach would allow for the notification to be sent too far in advance of the annual deadline date for it to be effective. In response to that concern, the Department proposed the regulatory language in the NPRM that specifies that the notification of the deadline date for submitting income documentation may be sent no later than 60 days and no earlier than 90 days before the annual deadline date.

The Department believes that including the annual deadline date in the initial notification required under §§ 682.215(e)(2), 685.209(a)(5)(ii), and 685.221(e)(2), as suggested by the commenter, would not be effective or helpful to most borrowers, as this notification is sent many months in advance of the annual deadline date. The Department believes the requirement for the borrower to be notified of the annual deadline date no later than 60 days and no earlier than 90 days before the annual deadline date provides sufficient advance notice for borrowers to plan for submitting the required information on time and will be more effective than notifying borrowers of the deadline date many months in advance. In addition, the Department notes that the notification required under §§ 682.215(e)(2), 685.209(a)(5)(ii), and 685.221(e)(2) also includes information about the borrower's option to request that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If a borrower makes such a request and the borrower's monthly payment is recalculated based on updated information provided by the borrower, there would be an associated change in the annual deadline date for submitting income information. This could be confusing for the borrower if the borrower had previously been notified of a different annual deadline date.

Changes: None.

Comments: One commenter asked the Department to modify the proposed regulations governing the IBR, ICR, and Pay As You Earn repayment plans by replacing all references to the requirement for income information to be received ''within 10 days'' of the annual deadline date with alternative language stating that the information must be received ''before or within 10 days'' of the annual deadline. The commenter believed that income information received from a borrower more than 10 days before the specified deadline date should be considered to have been received on time.

Discussion: The regulatory language specifying that income information must be received by the Secretary or loan holder within 10 days of the specified annual deadline date provides a ''grace period'' that allows a borrower who misses the annual deadline date to be considered to have submitted the required information on time if the information is received by the Secretary or the loan holder within 10 days of the specified deadline date. This language does not mean that income information received before the annual deadline date is not considered on time. The Department encourages borrowers to submit the required income information prior to the annual deadline.

Changes: None.

Comments: One commenter recommended that the Department revise proposed § 682.215(e)(8)(i), which requires a FFEL program loan holder to ''promptly'' determine a borrower's new monthly IBR payment amount if the required income information is received within 10 days of the specified annual deadline date, by defining the term ''promptly'' in order to establish specific guidelines on how quickly a loan holder must calculate a borrower's new monthly payment amount. The commenter noted that the corresponding Direct Loan regulations do not specify that the Secretary ''promptly'' determines the borrower's new monthly payment amount, though the Department noted in the preamble to the NPRM that the Secretary would apply the same requirements in the Direct Loan program. The commenter recommended that the Direct Loan regulations be revised to clarify that the Secretary will ''promptly'' determine a borrower's new IBR, Pay As You Earn, or ICR payment amount if the required income documentation is received within 10 days of the specified annual deadline date.

Discussion: The Department does not believe that it is necessary to define ''promptly'' in § 682.215(e)(8)(i). The regulations provide that if a borrower's income information is received within 10 days of the specified annual deadline date, but the loan holder does not determine the borrower's new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must maintain the borrower's current monthly payment amount until the new payment amount is determined, and the borrower is not penalized in any way as a result of the loan holder's failure to make a more timely determination of the new payment amount. However, the Department agrees with the recommendation to revise the applicable Direct Loan program regulations to clarify that if a borrower's income information is received within 10 days of the specified annual deadline date, the Secretary will ''promptly'' determine the borrower's new monthly payment amount.

Changes: We have amended proposed §§ 685.209(a)(5)(viii), 685.209(b)(3)(vi)(E), and 685.221(e)(8) to provide that if the Secretary receives the required income information from the borrower within 10 days of the specified annual deadline date, the Secretary ''promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.''

Comments: One commenter recommended that the Department add language to § 685.209(a)(5)(iii)(B) clarifying that, for borrowers repaying under the Pay As You Earn repayment plan whose income information is received more than 10 days after the specified annual deadline date, unpaid interest is not capitalized until the end of the borrower's current annual payment period. The NPRM stated that interest would be capitalized, but did not specify when the capitalization would occur. The suggested change would make the regulatory language for the Pay As You Earn repayment plan consistent with the corresponding IBR plan regulatory language in §§ 682.215(e)(3)(ii) and 685.221(e)(3)(ii).

Discussion: The Department agrees with the commenter's recommendation.

Changes: Proposed § 685.209(a)(5)(iii)(B) has been amended to clarify that unpaid interest will be capitalized ''at the end of the borrower's current annual payment period.''

Comments: One commenter asked the Department to revise § 685.209(b)(3)(v)(C) to clarify that if a borrower repaying under the ICR plan believes that special circumstances warrant an adjustment to the borrower's repayment amount, the borrower may contact the Secretary at any time during the borrower's current annual payment period to request a change in the repayment amount. The NPRM indicated that the borrower could contact the Secretary for a determination as to whether an adjustment was appropriate, but did not clarify that the borrower could make such a request at any time during the borrower's current repayment period. The proposed change would make the regulations for the ICR plan consistent with the corresponding IBR and Pay As You Earn repayment plan regulations.

Discussion: We agree with the recommended change.

Changes: We have revised § 685.209(b)(3)(v)(C) to clarify that a borrower may request a determination from the Secretary as to whether an adjustment to the borrower's payment amount is appropriate based on special circumstances at any time during the borrower's current annual payment period.

Comments: One commenter recommended that the regulations governing the ICR plan be revised to require that the Secretary inform borrowers that they are required to annually certify their family size in addition to providing income information. The commenter noted that while the proposed regulations for the IBR and Pay As You Earn repayment plans require borrowers to annually certify family size, and specify that the Secretary or the loan holder assumes a family size of one if the borrower does not do so, the proposed regulations for the ICR plan specified only that the borrower must annually provide income information. To ensure that the calculated monthly payment under the ICR plan accurately reflects the borrower's current family size, the commenter believed that the regulations governing the ICR plan should also require borrowers to annually certify their family size.

Discussion: Proposed § 685.209(b)(1)(iii)(A) reflected the current ICR plan regulations that provide that the Secretary applies the HHS Poverty Guidelines for the borrower's family size if the borrower provides acceptable documentation that the borrower's family includes more than one person. In accordance with this provision, the Secretary requires borrowers to certify family size only at the time the borrower initially selects the ICR plan and the Secretary then continues to use that family size to calculate the borrower's monthly payment amount unless the borrower reports a change in family size. For greater consistency among the income-driven repayment plans, and to ensure that the ICR payment amount reflects the borrower's current family size, the Department agrees with the commenter that it would be appropriate to require borrowers repaying under the ICR plan to certify family size upon initially selecting the ICR plan and annually thereafter, and to specify that the Secretary assumes a family size of one if the borrower fails to certify family size.

Changes: We have amended proposed § 685.209(b)(3)(vi)(A) by retaining the first part of the paragraph as introductory text and creating two new paragraphs (b)(3)(iv)(A)(*1*) and (b)(3)(iv)(A)(*2*), respectively. New paragraph (b)(3)(iv)(A)(*1*) contains the requirement that was in proposed § 685.209(b)(3)(vi)(A) for the borrower to provide documentation of his or her AGI. New paragraph (b)(3)(iv)(A)(*2*) requires the borrower to certify family size upon initially selecting the ICR plan and annually thereafter, and explains that the Secretary will assume a family size of one if the borrower fails to certify family size. In addition, new paragraph (b)(3)(iv)(A)(*1*) has been modified by adding a cross-reference to the alternative documentation of income provision in § 685.209(b)(3)(i) that was inadvertently omitted from the proposed regulations. Minor conforming changes have also been made elsewhere in § 685.209. We have also added language to § 685.209(b)(1)(iii)(A) clarifying that for purposes of the ICR plan, family size is defined in § 685.209(a)(1)(iv).

Comments: One commenter recommended that the Department modify the proposed IBR, ICR, and Pay As You Earn repayment plan regulations in §§ 682.215(e)(8), 685.209(a)(5)(viii), 685.209(b)(3)(vi)(E), and 685.221(e)(8) governing the treatment of borrowers whose annual income information is received within 10 days after the annual deadline. Specifically, the commenter recommended that proposed § 682.215(e)(8) be revised to clarify that if the loan holder does not calculate the borrower's new monthly payment amount by the end of the prior annual payment period, and the borrower continues to make payments at the previously calculated payment amount before the new payment amount is calculated, those payments would be considered to be qualifying payments for loan forgiveness purposes, as long as the payments otherwise meet the eligibility requirements for the respective repayment plans. The commenter recommended that similar language be added to the corresponding Direct Loan program regulations in §§ 685.209(a)(5)(viii), 685.209(b)(3)(vi)(E), and 685.221(f), to clarify that payments the borrower continued to make at the previously calculated payment amount would count for loan forgiveness purposes. The commenter noted that the proposed regulations in §§ 685.209(a)(5)(ix)(B), 685.209(b)(3)(vi)(F)(*2*), and 685.221(e)(9)(ii) indicate that, in the case of a borrower whose income information is received more than 10 days after the annual deadline, any payments that the borrower continues to make at the previously calculated payment amount after the end of the prior annual payment period and before the new payment amount is calculated would count as qualifying payments for purposes of Public Service Loan Forgiveness under § 685.219. The Department stated in the preamble to the NPRM that these payments would also count for purposes of IBR plan loan forgiveness. The commenter believed that the regulations governing the treatment of borrowers who submit their income information on time should likewise clarify that payments a borrower continues to make at the previously calculated amount before the new payment amount is calculated are counted for loan forgiveness purposes.

The commenter also recommended that comparable changes be made in §§ 682.215(e)(9), 685.209(a)(5)(ix)(B), 685.209(b)(3)(vi)(F)(*2*), and 685.221(e)(9)(ii) to clarify that in the case of a borrower whose income information is received more than 10 days after the annual deadline, any payments the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated would be considered qualifying payments for loan forgiveness purposes. The commenter noted that the Department clarified in the preamble to the NPRM that under proposed § 685.221(e)(9)(ii) any payments the borrower continued to make at the previously calculated amount would count for purposes of IBR loan forgiveness, and believed that adding this clarification to the regulations for all of the income-driven repayment plans would encourage borrowers to continue making payments, even if they miss the annual deadline for submitting their required income information.

Discussion: The Department does not believe it is necessary to revise the regulations to explicitly state that if a borrower's income information is received within 10 days after the specified annual deadline date, but the Secretary or the loan holder does not determine the borrower's new monthly payment amount prior to the end of the current annual payment period, payments the borrower continues to make at the previously calculated amount before the new payment amount is determined will count for purposes of loan forgiveness under the various income-driven repayment plans. The regulations make it clear that in such situations the Secretary or the loan holder maintains the borrower's previously calculated payment amount until the new payment amount is determined, and that the borrower is not subject to any adverse consequences as a result of the Secretary's or loan holder's failure to calculate the new payment amount in a timely manner. Payments the borrower continues to make at the previously calculated payment amount until the new payment amount is calculated are treated for loan forgiveness purposes the same as any other payments made under the IBR, ICR, or Pay As You Earn repayment plans.

Likewise, we do not believe it is necessary to make the similar changes that were recommended for §§ 682.215(e)(9), 685.209(a)(5)(ix)(B), 685.209(b)(3)(vi)(F)(*2*), and 685.221(e)(9)(ii). In the case of a borrower whose income information is received more than 10 days after the annual deadline, and the borrower's monthly payment is converted to the permanent standard payment amount, any payments that the borrower continues to make at the previously calculated payment amount are qualifying payments made under the IBR, ICR, or Pay As You Earn repayment plan and count as qualifying payments for purposes of loan forgiveness under those plans. The proposed regulations clarified that payments a Direct Loan borrower continues to make at the previously calculated amount would count for Public Service Loan Forgiveness purposes because otherwise these payments might be viewed as not meeting the eligibility requirements of the Public Service Loan Forgiveness program. We do not believe this clarification is needed with regard to counting payments for other loan forgiveness purposes.

We note also that the commenter's recommendation that the FFEL program regulations be revised to state that payments would count for purposes of Direct Loan program IBR, Pay As You Earn repayment plan loan forgiveness, and ICR loan forgiveness, and a similar proposed revision of the Direct Loan program regulations to refer to FFEL program IBR loan forgiveness would be incorrect. Qualifying payments that a borrower made on a FFEL program loan under the IBR plan are not counted toward Direct Loan program IBR, ICR, or Pay As You Earn repayment plan loan forgiveness. Also, qualifying payments that a borrower made on a Direct Loan program loan under one of the income-driven repayment plans do not count toward IBR loan forgiveness on the borrower's FFEL program loans.

Changes: None.

Comments: Several commenters recommended that the Department modify the proposed IBR and Pay As You Earn repayment plan regulations that provide for capitalization of unpaid interest if the Secretary or the loan holder does not receive a borrower's required annual income information within 10 days of the specified annual deadline.

The commenters believed that the adverse consequences for borrowers whose required information is received more than 10 days after the annual deadline date (capitalization of unpaid interest and conversion of their monthly loan payment to the permanent standard payment amount) are unduly harsh, particularly for borrowers with the lowest incomes. One of the commenters presented an example in which a borrower with $50,000 in loan debt chose the IBR plan and had a monthly payment amount of zero for the first three years because she was unemployed and had no income. The borrower finds a job paying $45,000 per year shortly before the fourth year of repayment under IBR, but misses the deadline for submitting the required annual income information to the loan holder. As a result, the borrower's required monthly payment amount would increase from zero to more than $500 (the permanent standard payment amount), and more than $10,000 in unpaid interest would be capitalized, significantly increasing the total amount the borrower would repay over the IBR plan repayment period. The commenter felt that this is a harsh and disproportionate penalty for missing a paperwork submission deadline. To address this issue, the commenter recommended that the regulations be revised to make the ''penalty'' for missing the annual deadline proportionate to the amount of time that elapses between the end of the most recent annual payment period and the date the borrower's income information is received. Specifically, the commenter proposed that if a borrower's income information is received more than 10 days after the specified annual deadline, only unpaid interest that accrues during the period that the borrower's income information is late would be capitalized.

Two other options suggested by the commenter would be to revise the IBR regulations to include a limit on the amount of unpaid interest that may be capitalized, or to authorize loan holders to reduce the interest capitalization penalty under exceptional circumstances. The commenter did not provide more detailed recommendations concerning these two additional options.

The commenter believed these suggested changes would lessen the consequences of missing the deadline date for the required annual income information. The commenter also believed that these proposals would have little or no budgetary implications because the budget baseline for IBR and ICR does not include significant revenue from large numbers of borrowers missing the income documentation deadline and having their unpaid accrued interest capitalized. The commenter stated that until recently, an IRS consent process allowed ICR and IBR borrowers to provide a multi-year consent to allow the Department to check their income, effectively preventing them from missing the annual income documentation deadline date. The commenter added that if the budget baseline never assumed revenue from large numbers of borrowers submitting late paperwork and having their accrued interest capitalized, limiting the capitalization of interest for late paperwork would have little to no budgetary impact.

Discussion: We decline to make the requested changes. The proposed regulations and the Department's current regulations reflect the statutory requirement in section 493C(b)(3)(B) of the HEA that requires capitalization of unpaid interest at the time a borrower repaying under the IBR plan elects to no longer make income-based payments, or is determined to no longer have a PFH. Under the current and proposed regulations, a borrower who fails to provide the annual income information required by the Secretary is considered to no longer have a PFH, and unpaid interest will be capitalized. Under the proposed regulations, unpaid interest would be capitalized only if the Secretary or the loan holder does not receive the required income information within 10 days after the annual deadline for the borrower to submit income information. In addition, the HEA (for the IBR plan), the current and proposed IBR plan regulations, and the proposed Pay As You Earn repayment plan regulations provide that if a borrower elects to discontinue making payments that are based on the borrower's income or is determined to no longer have a PFH, the borrower's monthly payment amount is recalculated and is no longer based on the borrower's income. In such cases, the recalculated payment amount is the amount the borrower would pay under a 10-year standard repayment plan, based on the loan amount the borrower owed upon entering repayment under the IBR or Pay As You Earn repayment plan. In the preamble to the NPRM, this recalculated payment amount is referred to as the ''permanent standard'' payment amount.

The proposed regulations provide for borrowers to be informed of the annual income documentation requirement at the time they initially choose the IBR, ICR, or Pay As You Earn repayment plan. Borrowers are notified of the specific deadline for submitting the income information no later than 60 days before the deadline date. In addition, the proposed regulations include a 10-day ''grace period'' following the specified annual deadline date and ensure that borrowers are not subject to any adverse consequences if their income information is received by the end of the grace period. We believe that these required notifications and borrower protections will significantly reduce the number of instances in which borrowers are subject to interest capitalization and conversion to the permanent standard payment amount as a result of their failure to submit required income information on time. As discussed elsewhere in this preamble, the Department is also planning to implement processes that will allow borrowers who select an income-driven repayment plan to apply electronically and populate the application with AGI information obtained directly from the IRS, eliminating the need for borrowers to separately submit documentation of AGI. Borrowers will also be able to use this process to update their AGI information annually, as required by the IBR regulations. Although borrowers will be provided with ample time and opportunity to meet the income documentation requirements of the IBR plan, compliance with these requirements is ultimately the borrower's responsibility. For borrowers who do not submit their income information on time, capitalization of unpaid interest is not a penalty, but rather a result of the borrower's failure to comply with the terms and conditions of the repayment plan that the borrower chose.

With regard to the suggested option of modifying the IBR plan regulations to include a cap on the amount of interest that may be capitalized, the Department does not have the statutory authority under the HEA to apply such a cap in the IBR plan. Section 493C(b)(3)(B) of the HEA requires the capitalization of any unpaid interest if a borrower is determined to no longer have a PFH or chooses to stop making income-based payments. The commenter's other recommendations (capitalizing only the interest that accrues during the period when a borrower's income information is late or giving loan holders discretion to limit interest capitalization under exceptional circumstances) are also inconsistent with the statutory interest capitalization requirements that apply in the IBR plan. Additionally, giving loan holders discretion to limit interest capitalization would result in inconsistent treatment of borrowers, since individual loan holders would determine what constitutes an exceptional circumstance.

Finally, the commenter's recommendations would present significant operational challenges for loan holders and servicers, including the Department. In accordance with section 493C(c) of the HEA, a borrower who is repaying under the IBR plan must annually provide income information so that the Secretary or loan holder may determine the borrower's continued eligibility to make income-based payments and calculate the borrower's IBR plan payment amount for the next annual payment period. Section 493C(b)(6) of the HEA provides that if a borrower repaying under the IBR plan is determined to no longer have a PFH or chooses to stop making income-based payments, all unpaid interest is capitalized. The policy reflected in the NPRM is consistent with these statutory requirements. Based on these same requirements, the systems of most loan holders and servicers are currently designed to automatically capitalize all unpaid interest at the end of a borrower's current annual payment period under the IBR plan and convert the borrower's payment to the permanent standard payment amount if the borrower has not provided the required income information. The commenter's recommendation to limit capitalization to the interest that accrues during the period when a borrower's income information is late would likely require interest capitalization to be handled as a manual process on an individual borrower basis. Such a manual process would not be feasible for the Secretary or loan holders to implement.

Changes: None.

Comments: One commenter recommended that the Department make two changes to proposed §§ 682.215(e)(7), 685.209(a)(5)(vii), 685.209(b)(3)(vi)(D), and 685.221(e)(7). First, the commenter asked the Department to add language clarifying that in the case of a borrower whose income information is received more than 10 days after the specified annual deadline, and whose monthly payment is converted to the permanent standard payment amount, the permanent standard payment amount will apply only until the Secretary or the loan holder receives the borrower's income documentation and calculates the new monthly payment amount. Second, the commenter recommended that additional language be added to the same sections of the regulations clarifying that a borrower's monthly payment will not be converted to the permanent standard payment amount if the borrower's income information is received more than 10 days after the annual deadline, but the Secretary or loan holder is able to determine the new monthly payment amount before the end of the borrower's current annual payment period. The commenter noted that this is consistent with what the Department said in the preamble to the NPRM, and believed that this borrower protection should be reflected in the regulations.

Discussion: We do not believe it is necessary to state in the regulations that the permanent standard payment amount applies only until the borrower's new monthly payment amount is determined. Sections 682.215(e)(9), 685.209(a)(5)(ix)(A), 685.209(b)(3)(vi)(F)(*1*), and 685.221(e)(9)(i) make it clear that the Secretary or loan holder calculates a new monthly payment amount once the borrower's income information is received, and it is understood that the new payment amount would then replace the permanent standard payment amount. However, we agree with the second change recommended by the commenter, for the reasons cited by the commenter.

Changes: We have modified §§ 682.215(e)(7), 685.209(a)(5)(vii), 685.209(b)(3)(vi)(D), and 685.221(e)(7) to clarify that in the case of a borrower whose income information is received more than 10 days after the specified annual deadline, the borrower's monthly payment is not converted to the permanent standard payment amount if the Secretary or the loan holder is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

Comment: Several commenters recommended that the Department revise §§ 685.209(a)(5)(vii), (a)(5)(viii) and (a)(5)(ix)(A), and 685.221(e)(6), (e)(8), and (e)(9) by changing ''and'' to ''through.'' The commenters believed that the use of the word ''and'' in each of these paragraphs would suggest that a borrower must provide both documentation of his or her AGI and alternative documentation of income. They recommended that the Department replace the word ''and'' with the word ''through'' to make it clear that both types of income documentation are not required.

Discussion: The proposed language cited by the commenters was not intended to suggest that a borrower must, in all cases, provide both documentation of AGI and alternative documentation of income. However, we do not believe that any changes are needed. The language describing alternative documentation of income in proposed §§ 685.209(a)(5)(i)(B) and 685.221(e)(1)(ii) makes it clear that alternative documentation of income is required only if the borrower's AGI is unavailable, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income. The use of the word ''and'' in §§ 685.209(a)(5)(vii), (a)(5)(viii), and (a)(5)(ix)(A), and 685.221(e)(6), (e)(8), and (e)(9) does not suggest that borrowers are always required to provide both types of income documentation. In some cases a borrower may be required to provide only AGI or only alternative documentation of income, but in other cases a borrower may be required to provide both types of income documentation (for example, if the Secretary believes that the AGI information previously provided by the borrower does not reasonably reflect the borrower's current income).

Changes: None.

Comments: A number of commenters recommended that the Department change the proposed regulations for the Direct Loan program governing the treatment of borrowers repaying under the IBR, ICR, and Pay As You Earn repayment plans whose income information is received within 10 days of the specified annual deadline, and those borrowers whose income information is received more than 10 days after the annual deadline. One commenter recommended that, for consistency with the corresponding FFEL program IBR plan regulations in § 682.215(e)(8)(iii), the proposed Direct Loan program regulations in §§ 685.209(a)(5)(viii), 685.209(b)(3)(vi)(E), and 685.221(e)(8) should be revised to clarify that if a borrower's new calculated monthly payment amount is equal to or greater than the borrower's previously calculated monthly payment amount, and the borrower continued to make payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary does not make any adjustments to the borrower's account to make up for the difference between any payments the borrower made at a lower previously calculated amount and the higher current payment amount. Several other commenters recommended that the Department make this same change in §§ 685.209(a)(5)(viii) and 685.221(e)(8), and proposed that the Department further revise and restructure these paragraphs for greater clarity. Using § 685.209(a)(5)(viii) from the proposed Pay As You Earn repayment plan regulations as an example, these commenters proposed to restructure § 685.209(a)(5)(viii) by dividing the current single paragraph into (a)(5)(viii)(A) and (B). All of the text from proposed (a)(5)(viii) would be retained with no changes, but most of the current text would be placed in new paragraph (a)(5)(viii)(A)(*1*), and new paragraphs (a)(5)(viii)(A)(*2*) and (a)(5)(viii)(A)(*3*) would be added, along with a new paragraph (a)(5)(viii)(B). New paragraph (a)(5)(viii)(A)(*2*) would clarify that if the borrower's new calculated monthly payment amount is equal to or greater than the borrower's previously calculated payment amount, and the borrower continued to make payments at the previous amount before the new payment was calculated, the Secretary does not make any adjustments to the borrower's account. New paragraph (a)(5)(viii)(A)(*3*) would clarify that payments made by the borrower at the previously calculated payment amount would be considered qualifying payments for purposes of the Public Service Loan Forgiveness program under § 685.219, provided that the payments otherwise meet the requirements of that program. New paragraph (a)(5)(viii)(B) would include the Department's clarification in the preamble to the NPRM that the new annual payment period begins on the day after the end of the most recent annual payment period. The commenters recommended that the Department make the same changes in § 685.221(e)(8) of the Direct Loan program IBR plan regulations, and that similar changes be made in proposed § 682.215(e)(8) of the FFEL program IBR plan regulations.

The same commenters proposed an additional change in §§ 685.209(a)(5)(ix) and 685.221(e)(9), which govern the treatment of borrowers whose income information is received more than 10 days after the specified annual deadline. Specifically, the commenters proposed to remove §§ 685.209(a)(5)(ix)(B) and 685.221(e)(9)(ii), which provide that any payments that a borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new payment amount is calculated are considered to be qualifying payments for purposes of the Public Service Loan Forgiveness program, provided that the payments otherwise meet the eligibility requirements of that program. The commenters proposed to remove these paragraphs from §§ 685.209(a)(5)(ix) and 685.221(e)(9) and place the same text in new §§ 685.209(a)(5)(viii)(A)(*3*) and 685.221(e)(8)(i)(C), respectively.

Discussion: We agree that the recommended changes provide greater consistency and clarity, except for the proposed removal of §§ 685.209(a)(5)(ix)(B) and 685.221(e)(9)(ii). These paragraphs, which reflect the consensus language agreed to at the conclusion of the negotiated rulemaking sessions, clarify that even if a borrower misses the annual deadline and the borrower's payment is converted to the permanent standard payment amount, any payments that the borrower continues to make at the previously calculated income-based payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of the Public Service Loan Forgiveness program. Although we disagree with the proposal to remove §§ 685.209(a)(5)(ix)(B) and 685.221(e)(9)(ii), we believe that for consistency it would be appropriate to add the same clarifying language to the regulatory provisions governing the treatment of borrowers whose income information is received on time, and who continue to make payments at the previously calculated payment amount before the new monthly payment amount is determined.

Changes: We have revised §§ 682.215(e)(8), 685.209(a)(5)(viii), and 685.221(e)(8) as described earlier in the *Comments* and *Discussion* sections. We have also made comparable changes to the ICR plan regulations in § 685.209(b)(3)(vi)(E).

Comments: Several commenters recommended that the Department restructure proposed §§ 682.215(e)(2) and (e)(4) and 685.221(e)(2) and (e)(4) for greater clarity. Proposed §§ 682.215(e)(2) and 685.221(e)(2) specify, in paragraphs (e)(2)(i) through (e)(2)(v) of both the FFEL and Direct Loan program regulations, the information that must be included in a written notification to a borrower after the Secretary or the loan holder makes a determination that a borrower has a PFH to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a PFH. In both the FFEL and Direct Loan program regulations, proposed paragraph (e)(2)(v) states that the written notification must include information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary or the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed. The last sentence of paragraph (e)(2)(v) states that if the Secretary or loan holder recalculates the borrower's payment at the borrower's request, the Secretary or loan holder sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v).

Proposed §§ 682.215(e)(4) and 685.221(e)(4) specify, in paragraphs (e)(4)(i) through (iii) of both the FFEL and Direct Loan program regulations, the information that must be included in a written notice to the borrower each time the Secretary or the loan holder makes a determination that a borrower no longer has a PFH for a subsequent year that the borrower remains on the IBR plan. In both the FFEL and Direct Loan program regulations, paragraph (e)(4)(iii) states that the written notification must include information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary or the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed. The last sentence of paragraph (e)(4)(iii) states that if the Secretary or loan holder recalculates the borrower's payment based on the borrower's request, the Secretary or loan holder sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (v).

The commenters believed that §§ 682.215(e)(2)(v) and (e)(4)(iii) and 685.221(e)(2)(v) and (e)(4)(iii) could, as currently structured, be interpreted to mean that the written notifications required by the introductory text of §§ 682.215(e)(2) and (e)(4) and 685.221(e)(2) and (e)(4) must inform the borrower that the Secretary or the loan holder will send the borrower another written notification if the Secretary recalculates the borrower's payment amount based on the borrower's request. To avoid this possible misinterpretation, the commenters recommended that the last sentences in §§ 682.215(e)(2)(v), 682.215(e)(4)(iii), 685.221(e)(2)(v), and 685.221(e)(4)(iii) be placed in separate paragraphs, with additional conforming changes to the numbering of the paragraphs to reflect the suggested restructuring.

Discussion: The recommended changes are not necessary. The phrasing of the last sentences in §§ 682.215(e)(2)(v), 682.215(e)(4)(iii), 685.221(e)(2)(v), and 685.221(e)(4)(iii) (''If the [Secretary/loan holder] recalculates * * *'') makes it clear that these sentences describe actions that must be taken only if the borrower's payment is recalculated. The written notification required by the introductory text of §§ 682.215(e)(2) and (e)(4) and 685.221(e)(2) and (e)(4) does not have to inform the borrower that another written notification will be sent if the borrower's payment is later recalculated based on the borrower's request.

Changes: None.

Comments: Several commenters requested clarification regarding proposed §§ 682.215(e)(3)(ii) and 685.221(e)(3)(ii), which provide for the Secretary or the loan holder to explain to the borrower the consequences if the borrower's income information is not received within 10 days following the annual deadline. Specifically, the commenters asked the Department to confirm their understanding, based on discussions that took place during the negotiated rulemaking sessions, that the notification to the borrower would not communicate the actual 10-day ''grace period'' following the deadline date. Rather, it was the understanding of the commenters that the purpose of the notification to the borrower was simply to explain the consequences of not providing the required income information in a timely manner. The commenters were concerned that telling the borrowers about the extra 10 days could lead some borrowers to not mail the required information by the specified deadline and to miss the extra 10 days for mail processing time.

Discussion: Proposed §§ 682.215(e)(3)(ii) and 685.221(e)(3)(ii), which were approved by the consensus of the negotiated rulemaking committee, state that the notice must inform the borrower of the consequences if the Secretary or the loan holder does not receive the required income information ''within 10 days following the annual deadline specified in the notice.'' The clear intent of §§ 682.215(e)(3)(ii) and 685.221(e)(3)(ii) is that the notice must inform the borrower of the additional 10-day period. We note that this is consistent with many notices sent to borrowers in connection with other financial obligations, such as home mortgages. For example, most monthly mortgage statements specify a date, generally 10 to 15 days after the payment due date, by which the borrower's payment must be received to avoid late charges or other penalties. We believe it is in the best interest of the borrower to make the borrower aware of the additional 10-day period.

Changes: None.

Comments: Several commenters recommended clarifying changes to §§ 682.215(e)(3) and (e)(7). Section 682.215(e)(3) describes the notification that is sent to a borrower who has a PFH for a subsequent year under the IBR plan; § 682.215(e)(7) describes what happens if a borrower who is repaying under the IBR plan remains on the plan for a subsequent year, but the loan holder does not receive the borrower's income information within 10 days of the specified annual deadline. The commenters recommended that § 682.215(e)(3) be revised to explain more clearly that it cannot be known whether a borrower will remain on the IBR plan with a PFH until the lender determines whether the borrower qualifies for that subsequent year. They recommended that § 682.215(e)(7) be restructured and slightly revised to more clearly state that a borrower who currently has a PFH will be moved to the permanent standard payment amount upon expiration of the current annual payment period if the borrower's income information is not received within 10 days of the annual deadline.

Discussion: We believe that the two paragraphs cited by the commenters are sufficiently clear as currently written and therefore decline to make the changes suggested.

Changes: None.

Comments: Several commenters recommended that the Department add a new administrative forbearance provision in § 682.211(f) to cover the new type of administrative forbearance included in proposed § 682.215(e)(9).

Discussion: We agree with the commenter. To ensure consistency and completeness in our regulations, we are making the proposed change to § 682.211(f).

Changes: We have revised § 682.211(f) by adding a new paragraph (f)(16) that addresses the forbearance provision described in § 682.215(e)(9).

Income-Based and Income-Contingent Repayment Plans: Eligibility for Interest Subsidy on Income-Based and Pay As You Earn Repayment Plan Payments of Less Than Accrued Interest for Borrowers Who Change Plans (§§ 685.209(a)(2)(iii) and 685.221(b)(3))

Comments: Several commenters asked for clarification on the treatment of Direct Loan borrowers who change from repayment under the IBR plan to repayment under the Pay As You Earn repayment plan, or the reverse, as it relates to the borrower's eligibility for the interest subsidy on the borrower's subsidized Direct Loans. The commenters stated that proposed §§ 685.209(a)(2)(iii) and 685.221(b)(3) appear to require the Department to reset the measurement of the borrower's three consecutive years of eligibility for this interest subsidy when the borrower enters each plan.

Discussion: The proposed regulations did not address the treatment of a borrower who leaves the IBR plan and enters the Pay As You Earn repayment plan, or the reverse. Under these plans, if a borrower's calculated monthly payment on a subsidized Direct Loan does not cover all accruing interest, the Secretary will pay the remaining interest that accrues on the loan for up to three consecutive years from the date the borrower entered the respective repayment plan, excluding periods during which the borrower has an economic hardship deferment. However, the intent of the regulations was not to provide borrowers who change from one plan to the other with up to six years of eligibility for the interest subsidy. That result would be inconsistent with the HEA. Instead, to be consistent with the treatment of Direct Consolidation loans that repay loans that were being repaid under IBR, the maximum three-year interest subsidy period will include any period during which the Secretary did not charge the borrower accrued interest under the other repayment plan.

Changes: Sections 685.209(a)(2)(iii) and 685.221(b)(3) have been revised to state that any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under either the IBR or the Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive.

Determination of Initial Borrower Partial Financial Hardship Status and Recalculated Payment Amount for Borrowers Transferring Between the IBR and Pay As You Earn Repayment Plans (§§ 685.209(a)(1)(v), 685.209(a)(4), 685.209(a)(4)(i)(A), 685.221(a)(4), 685.221(d), and 685.221(d)(1)(i))

Comments: Several commenters requested clarification on the treatment of a borrower who changes from repayment under the IBR plan to repayment under the Pay As You Earn repayment plan, or the reverse, as it relates to determining whether the borrower has a PFH to initially qualify for the respective plan and, if the borrower initially qualifies for the plan but is later determined to no longer have a PFH, determining the borrower's recalculated maximum monthly payment amount (the amount referred to as the ''permanent standard'' payment amount in the NPRM). The commenters noted that the definition of ''partial financial hardship'' in proposed § 685.209(a)(1)(v) provides for comparing the amount due on the borrower's eligible loans at the time the borrower initially entered repayment with the amount due ''at the time the borrower elects the ICR–A plan.'' The provision for determining the permanent standard payment amount in proposed § 685.209(a)(4)(i)(A) provides that the borrower's maximum monthly payment (if the borrower no longer has a PFH or chooses to stop making income-contingent payments) is the amount that would be due under a 10-year standard plan using the amount of the borrower's eligible loans that was outstanding ''at the time the borrower began repayment on the loans under the ICR–A plan.'' The commenters stated that in a situation where a borrower changes from the IBR plan to the Pay As You Earn repayment plan, the proposed regulations appeared to require the Department to recalculate the maximum monthly payment amount used for the purposes of determining PFH status and the permanent standard payment amount. If this was not the Department's intent, the commenters recommended that the regulations be revised to clarify the treatment of a borrower who changes from one repayment plan to the other.

Discussion: The commenters' understanding of the intent of the proposed regulations is correct. We believe that because a borrower's outstanding eligible loan balance may increase as a result of interest capitalization after the borrower leaves the IBR plan to repay under the Pay As You Earn repayment plan (or the reverse), the borrower will receive the greatest benefit if the Secretary uses the greater of the amount due at the time the borrower first entered repayment or at the time the borrower elects to enter the new plan when determining whether the borrower has a PFH. We also believe that once a borrower has begun repayment under either the IBR or the Pay As You Earn repayment plan after such a transfer, and later becomes subject to a change in the maximum payment amount under § 685.209(a)(4) or § 685.221(d), there is no reason to treat the borrower differently from other borrowers under the plan when recalculating the borrower's maximum payment amount. As a result, the recalculated maximum payment amount for a borrower repaying under IBR who no longer has a PFH or who chooses to stop making income-based payments would continue to be based on ''the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment under the income-based repayment plan'' as provided under section 685.221(d)(1)(i). For borrowers repaying under the Pay As You Earn repayment plan, the maximum recalculated payment amount under the same circumstances would be calculated using ''the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the ICR–A [Pay As You Earn repayment] plan.''

Changes: None.

Income-Based and Income-Contingent Repayment Plans: Payment Issues Qualifying Payments for IBR, Pay As You Earn, and ICR Loan Forgiveness

Comments: Several commenters requested that the Department clarify whether a borrower who changes from repayment under the Pay As You Earn repayment plan (referred to as ICR–A in the NPRM) to repayment under the ICR plan (referred to as ICR–B in the NPRM) would still be subject to the 20-year repayment requirement for loan forgiveness that applies under the Pay As You Earn repayment plan. These same commenters recommended that the regulations governing eligible payments for ICR forgiveness be revised to include payments made under the Pay As You Earn repayment plan as eligible payments toward the 25 years for forgiveness under the ICR plan.

Discussion: When a borrower transfers from the Pay As You Earn repayment plan to the ICR plan, the borrower becomes subject to the requirements of the ICR plan, which provides for forgiveness after 25 years of repayment. Prior payments made under the Pay As you Earn repayment plan would, however, count toward the 25 years of repayment required for forgiveness under the ICR plan.

Changes: Section 685.209(b)(3)(iii) of the proposed regulations governing the ICR plan repayment period has been revised to specify in new paragraph (b)(3)(iii)(*3*) that the repayment period includes periods in which the borrower made monthly payments under the Pay As You Earn repayment plan, and proposed paragraphs (b)(3)(iii)(*3*)–(*7*) have been redesignated as (b)(3)(iii)(*4*)–(*8*).

Comments: Several commenters suggested that the proposed regulations in § 685.221(f)(1)(iii) governing IBR loan forgiveness in the Direct Loan program were inconsistent with the statutory requirements in section 493C(b)(7)(B)(ii) of the HEA and the corresponding FFEL regulations at 34 CFR 682.215(f)(1)(iv), and recommended that the Direct Loan regulations be revised to remove this inconsistency. The commenters also recommended that the same change be made in § 685.209(a)(6)(i)(C), since the Pay As You Earn repayment plan is largely modeled on the IBR plan. The commenters claimed that the proposed Direct Loan regulations in § 685.221(f)(1)(iii) are inconsistent with the HEA.

Discussion: We agree with the commenters that changes should be made in §§ 685.221(f) and 685.209(a)(6)(i), but disagree with the specific change that the commenters proposed. Sections 685.221(f)(1)(iii) and 685.209(a)(6)(i)(C) of the Direct Loan regulations should correspond to § 682.215(f)(1)(iii) of the FFEL regulations, which reflects section 493C(b)(7)(B)(iii) of the HEA. Section 493C(b)(7)(B)(iii) of the HEA governs a circumstance under which a borrower repays under any repayment plan other than the 10-year standard plan and pays a monthly payment amount under that plan that is not less than what the borrower would pay under the standard repayment plan over a 10-year period. This provision of the HEA does not refer to the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment under the IBR plan. We believe that §§ 685.209(a)(6)(i)(D) and 685.221(f)(1)(iv) of the Direct Loan regulations should correspond with section 682.215(f)(1)(iv) of the FFEL regulations, which reflects section 493C(b)(7)(B)(ii) of the HEA. As a result, we are revising §§ 685.209(a)(6)(i)(C) and (D) and 685.221(f)(1)(iii) and (iv) to properly align these provisions with the HEA and the FFEL regulations.

Changes: Sections 685.209(a)(6)(i)(C) and 685.221(f)(1)(iii) of the Direct Loan regulations have been revised to delete the words ''for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment'' at the end of the respective paragraphs and to substitute in their place the words ''with a 10-year repayment period.'' Sections 685.209(a)(6)(i)(D) and 685.221(f)(1)(iv) have also been revised by inserting at the end of the respective paragraphs before the period: ''For the amount of the borrower's loans that were outstanding at the time the borrower first selected the Pay As You Earn repayment plan''; and ''for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.''

Comments: Many commenters requested that the current treatment of consolidation loans for purposes of the repayment period associated with IBR and ICR loan forgiveness be changed and that all qualifying payments made before and after consolidation should be counted towards a borrower's IBR or ICR loan forgiveness if the loans on which qualifying payments are made are later consolidated. The commenters believed that borrowers should be given appropriate credit for what may be many years of qualifying payments on loans that are later consolidated, and noted that counting payments made prior to consolidation for purposes of the three consecutive years of interest subsidy on subsidized loans under the IBR plan, and as proposed under the new Pay As You Earn repayment plan, serves as a precedent for such a change.

Discussion: The conditions and qualifying payments that a borrower must satisfy for loan forgiveness are in section 493C(b)(7) of the HEA, which states that ''the Secretary shall repay or cancel an outstanding balance of principal and interest due on all loans made under part B or D'' if certain payment conditions are met on those loans. There is no outstanding balance of principal and interest due on a loan if the loan is repaid through the consolidation process and therefore a borrower's payments on a loan that is later repaid through consolidation are considered in calculating the 20- or 25-year repayment period necessary for forgiveness of a Direct or FFEL Consolidation loan.

Changes: None

Treatment of Prepayments for Borrowers Repaying Under the IBR, ICR, and Pay As You Earn Repayment Plans

Comments: One commenter noted that, consistent with § 682.215(c)(2)(4) of the current FFEL regulations governing the IBR plan, the proposed regulations added language to the Direct Loan regulations in §§ 685.209(a)(3)(ii)–(iv) and 685.221(c)(2)–(4) to clarify that borrowers repaying their Direct Loans under the IBR and the Pay As You Earn repayment plan may prepay their loans without penalty. The commenter recommended that similar language be added to the regulations governing the ICR plan.

The same commenter also observed that the proposed regulations allowed a different treatment of borrower excess payments or prepayments if the borrower submits the annual paperwork for determination of the borrower's IBR or Pay As You Earn PFH eligibility and the recalculation of the borrower's IBR, Pay As You Earn, and ICR scheduled monthly payment amount within 10 days of the specified annual deadline, and recommended that this treatment be applied to all borrowers repaying loans under the IBR and ICR plans. Under the proposed regulations, if a borrower's annual paperwork is received within 10 days of the specified annual deadline, the borrower's current monthly payment is maintained until the new scheduled monthly payment amount is determined. If the new calculated scheduled monthly payment amount is less than the amount the borrower paid while the prior annual payment amount was maintained, the loan servicer makes appropriate adjustments to the borrower's account that can result in the borrower having made excess payments during those months. Sections 682.215(e)(8)(ii), 685.209(a)(5)(viii), 685.209(b)(vi)(E), and 685.221(e)(8) provide that excess payments identified retroactively through these adjustments will be applied first to accrued interest, then to collection costs, then to late charges, and finally to loan principal, unless the borrower requests otherwise. The commenter noted that borrower excess payments or prepayments at all other times are applied to the borrower's future installment payments by advancing the borrower's next payment due date unless the borrower requests otherwise. The commenter believed that treating prepayment amounts as intended for future installment payments is not appropriate for borrowers repaying under the IBR and ICR plans where required payments are based on the borrower's income and family size and pointed out that FFEL and Direct Loan general prepayment regulations already contain an exception for IBR in §§ 682.209(b)(1) and 685.211(a)(1) of the regulations. The commenter believed a change in the treatment of excess payments for IBR and ICR borrowers would encourage borrowers to make larger payments and repay their loans faster and recommends deleting proposed §§ 685.209(a)(3)(iii) and 685.221(c)(3) and § 682.215(c)(3) of the current FFEL IBR regulations that state: ''If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3) [§ 682.209(b)(2)(ii) in FFEL].''

The same commenter also recommended that all borrowers be allowed to specifically request that their excess payments be counted toward principal first, rather than be applied first to accrued interest, collection costs, and late charges, and that regulatory provisions governing recalculation of payments be modified so that borrowers making payments greater than their required scheduled monthly payment amount are not treated as if they no longer have a PFH and are forced to make a ''permanent standard'' payment amount.

Discussion: The application of borrower payments under the IBR plan is specified in section 493C(b)(2) of the HEA and is reflected in § 682.215(c)(1) of the FFEL regulations and § 685.221(c) of the Direct Loan regulations. Under the HEA, payments must be applied first toward interest due on the loan, next toward any fees due on the loan, and then toward the principal of the loan. ''Fees due on the loan'' are identified as collection costs and late charges in the regulations and are the responsibility of the borrower. The proposed regulations for the Pay As You Earn repayment plan would adopt the IBR payment application requirements along with other features of the IBR plan. Given the different payment application requirements under IBR and the proposed Pay As You Earn repayment plan, we believe it is important to clarify in the regulations governing those plans that borrowers paying under these plans may prepay all or part of their loans at any time without penalty.

The ICR plan, however, is not subject to these statutory payment application requirements. Borrower payments under ICR and the other remaining Direct Loan repayment plans are applied in accordance with § 685.211(a)(1), which provides that any payment is first applied to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal. Section 685.211(a)(2) of the Direct Loan regulations provides borrowers repaying under ICR and the other remaining Direct Loan repayment plans the same protection on the ability to prepay a loan without penalty at any time. As a result, we do not believe the change recommended by the commenter is needed in the ICR regulations.

We also disagree that the same treatment of excess payments as that proposed for IBR, Pay As You Earn, and ICR borrowers that submit their annual paperwork on time and maintained their current payment until a new lower annual payment is calculated should be applied to all IBR and ICR borrowers at all times. The excess payments subject to these exception processing provisions are the result of adjustments made after the borrower's lower annual payment amount is calculated. We believe it is important to ensure that excess payments identified through such adjustments for a retroactive period do not affect the integrity of the separate payments the borrower has already made at the higher annual payment amount. We have, therefore, specified in the regulations that these payments will be applied, unless otherwise requested by the borrower, to cover accrued interest, other charges, and loan principal first. Since many borrowers who continue to make on-time, full monthly payments at the prior annual scheduled payment amount under these circumstances will not have outstanding accrued interest or other charges, the excess funds will be used primarily to reduce the loan principal.

Sections 682.209(b)(2)(ii) and 685.211(a)(3) provide all FFEL and Direct Loan borrowers the opportunity to request that excess payment amounts or lump sum prepayments not be treated as intended for future installment payments. These provisions require the loan holder or the Department to treat a prepayment that equals or exceeds the borrower's scheduled monthly payment amount under the borrower's repayment plan as intended for a future installment payment by advancing the due date of the next payment, unless the borrower requests otherwise. As a result, we do not believe it is necessary to revise the IBR and ICR regulations governing prepayments.

Finally, we disagree that the IBR and Pay As You Earn regulations governing recalculation of borrower payment amounts need to be modified to prevent a borrower who currently has a PFH and who makes excess payments from losing PFH status and being converted to a 10-year standard (permanent standard) payment amount. The regulations clearly provide that borrowers will be determined to no longer have a PFH and converted to the permanent standard payment amount only based on: (1) The loan holder's annual evaluation of the borrower's income and family size; (2) the borrower's failure to provide the required information annually that is necessary to determine continued PFH status and recalculate the borrower's scheduled monthly payment; (3) the borrower's notice to the loan servicer that the borrower no longer chooses to make income-based payments; or (4) the borrower's request to leave the IBR or Pay As You Earn repayment plan. The Secretary encourages borrowers to make excess payments if they can and to exercise their options under the regulations on the treatment of those payments.

Changes: None.

Leaving the IBR Plan (§§ 682.215(d)(3) and 685.221(d)(2)(ii))

Comments: Many commenters requested that the Department modify the IBR regulations to permit borrowers to exit the IBR plan without what the commenters believe is a prohibitive penalty. These commenters requested that borrowers not be required to repay their loans under the standard repayment plan when exiting the IBR plan or, if they are required to enter the standard plan, that borrowers not be required to make a payment under the standard repayment plan before being allowed to move to another repayment plan for which the borrower is eligible. Commenters asserted that requiring borrowers to exit the IBR plan and enter the standard repayment plan, or requiring such borrowers to make one payment under the standard plan before switching to another repayment plan for which the borrower is eligible, constitutes a prohibitive penalty because the borrower's payment amount under the standard repayment plan would be far higher than under the IBR plan or another repayment plan for which the borrower may be eligible.

These same commenters also requested that the FFEL regulations be revised to require FFEL holders to grant a reduced-payment forbearance to borrowers who exit the IBR plan if the borrower is unable to make the scheduled monthly payment under the standard repayment plan. The commenters requested this revision to ensure that FFEL borrowers would receive the same treatment as Direct Loan borrowers. In the Direct Loan program, the Secretary will grant a reduced-payment forbearance to borrowers in this circumstance. These commenters also requested that the Department set a ceiling on the payment amount required under the reduced-payment forbearance agreement, require that interest accruing during such a forbearance period not be capitalized, and clarify that the reduced-payment forbearance period may be as short as the time needed for a borrower to make one reduced payment.

Several commenters also requested that the Department clarify that the reduced-payment forbearance granted to such borrowers could result in a payment of any amount greater than $0.

Discussion: Section 493C(b)(8) of the HEA requires a borrower who leaves the IBR plan to repay the loans formerly repaid under the IBR plan under the standard repayment plan. The borrower also becomes subject to the maximum statutory repayment period under the standard plan with the time spent in the IBR plan counted against that statutory maximum repayment period. The Department has interpreted the statutory requirement that borrowers exiting the IBR plan must repay under the standard repayment plan to be satisfied if the borrower makes one full monthly payment under the standard plan before the borrower switches to another repayment plan. Because the time spent repaying in IBR counts against the statutory maximum repayment periods applicable to the other repayment plans, the outstanding balance of the loan at the time the borrower exits the IBR plan must be amortized over the remaining years available to the borrower under the standard plan to determine the standard plan payment amount. Any unpaid accrued interest the borrower may have is also capitalized when the borrower leaves the IBR plan. As a result, the resulting payment calculated for the borrower under the standard repayment plan may be quite large. Other borrowers whose time repaying under IBR already exceeds the maximum repayment periods available under other repayment plans may not be able to leave the IBR plan, which provides for a longer repayment period.

During negotiated rulemaking, the Department acknowledged that borrowers exiting IBR may be required to make a large payment under the standard plan before requesting to move to another repayment plan. As a result, the proposed IBR regulations permit the borrower to make a lesser payment under a reduced-payment forbearance agreement to satisfy the one-payment requirement under the standard repayment plan.

With regard to the commenters' request that the Department require FFEL loan holders to grant a reduced-payment forbearance to borrowers exiting IBR, section 428(c)(3)(A) of the HEA requires loan holders to grant forbearances in limited circumstances specified in the HEA. Otherwise, section 428(c)(3)(B) of the HEA states that lenders may grant forbearance for the benefit of the borrower as permitted under regulations of the Secretary. Under the proposed regulations, FFEL holders are authorized to grant reduced-payment forbearances to borrowers in these circumstances and we strongly recommend and expect that they will do so. However, we do not believe that under the HEA we can mandate that FFEL holders grant forbearances in these circumstances.

With regard to the comments that sought clarification on the payment amount required under the reduced-payment forbearance for such a borrower, the amount of any reduced-payment forbearance is a matter negotiated between the borrower and the loan holder. The Department believes that for these borrowers it can be any amount that is greater than $0 and less than the borrower's scheduled monthly payment under the standard repayment plan. For example, one approach to determining the reduced payment amount in this circumstance would be to require the borrower to pay the scheduled monthly payment amount the borrower would pay under the repayment plan the borrower seeks to pay under after leaving the standard repayment plan. If the borrower is eligible for and wants to enter the extended repayment plan, the reduced-payment forbearance amount could be set at the amount the borrower would otherwise be required to pay under the extended repayment plan.

With regard to the commenters' request for clarification that the reduced-payment forbearance period need not be longer than one month, we agree that the forbearance period can be limited to the time associated with the one required monthly payment under the standard repayment plan. Finally, because the forbearance is granted while the borrower is repaying under the standard repayment plan, and not when the borrower is transferring to the standard repayment plan, there is no basis under the for not capitalizing any unpaid accrued interest related to the forbearance period.

Changes: None.

Income-Based and Income-Contingent Repayment Plans: Other Issues

Treatment of Married Borrowers

Comments: Several commenters requested that the Department remove the so-called ''marriage penalty'' associated with the IBR plan. Specifically, the commenters objected to the requirement that borrowers who are married and who file a joint Federal income tax returns must include the income of both the borrower and the borrower's spouse for use in determining eligibility for IBR and calculating the scheduled monthly payment amount under the plan regardless of whether the spouse has loans eligible under the plan or requests to pay under the plan. Many commenters believed that the spouse's income should not be considered because the spouse has no legal responsibility for repayment of the borrower's debt. Many commenters also stated that married borrowers would need to decide whether to file their Federal income tax returns separately and forego the various benefits in the Internal Revenue Code associated with filing their Federal income tax returns jointly with their spouse, or to file their Federal income tax returns jointly with the prospect that this could result in a higher calculated monthly payment amount under the plan or making them ineligible for IBR.

Discussion: The treatment of married borrowers under IBR is specified in section 493C(a)(3)(B)(i) of the HEA, which states that the borrower's and the borrower's spouse's AGI is used when determining a PFH for borrowers who are married and file a joint Federal income tax return. In addition, section 493C(d) of the HEA specifies that only the borrower's AGI and eligible Federal student loan debt are used if the borrower is married, but files a separate Federal income tax return.

Changes: None.

Comments: Some commenters who are married and reside in States that treat income and property acquired during the marriage as community property strongly objected to the fact that they are required, as a general matter, to pool all community income on their Federal income tax return if they file their taxes jointly or to split all community income equally between them if they file their taxes separately, thus significantly affecting their eligibility for IBR and the calculated scheduled monthly payment amount under the IBR plan in comparison with other married borrowers residing in non-community property states.

Discussion: As described in the response to the previous comment on married borrowers, the treatment of income of married borrowers when determining IBR eligibility is specified in the HEA. The Department acknowledges, however, that application of these requirements to married borrowers who reside in community property states and who file separately from their spouse results in a different outcome than for similarly situated married borrowers residing in other states.

As an example, a married couple resides in a community property state and has no dependents. The borrower earns $40,000 and the spouse earns $60,000. They filed their income tax returns separately and have no pre-tax deductions from pay, no other income, and no adjustments to income when filing their Federal income tax returns. Only the borrower has IBR-eligible Federal student loans, which total $50,000. Each spouse would be considered to have an AGI of $50,000. The borrower is eligible for the IBR plan, with a calculated monthly payment amount of $341.31. If the same couple did not reside in a community property state and filed separately, the borrower would have an AGI of $40,000 and the spouse an AGI of $60,000. Because the borrower's AGI would only be $40,000, the borrower would be eligible for the IBR plan, but would have a lower IBR scheduled monthly payment amount of $216.31.

The Department understands that married borrowers who file their Federal income tax returns separately from their spouses and who reside in community property states may be disadvantaged when determining IBR eligibility when compared to similarly situated married borrowers in non-community property states. However, §§ 682.215(e)(1)(B) and 685.221(e)(1)(i)(B) and § 685.209(a)(5)(i)(B) authorize the use of alternative documentation of a borrower's income if the Secretary or the FFEL loan holder believes the borrower's reported AGI does not reasonably reflect the borrower's current income. Because the Department believes that it is inequitable to treat married borrowers who file their Federal income tax returns separately differently based on where they reside, we encourage FFEL loan holders to use alternative documentation of the borrower's income under these circumstances. The Department will take the same approach with the loans it holds.

Changes: None.

Notices to Borrowers in Anticipation of Receiving Forgiveness Under the IBR, ICR, and Pay As You Earn Repayment Plans (§§ 682.215(g), 685.209(a)(6)(v)(A), 685.209(b)(3)(iii)(D), and 685.221(f)(5))

Comments: Several commenters requested that the Department clarify that the notices required to be sent to borrowers who are approaching the end of the maximum repayment period necessary for loan forgiveness under the IBR, ICR, or Pay As You Earn repayment plans would be based on the information available to the loan holder at the time that the notice is generated and that later circumstances could affect the information provided in the notice.

Discussion: The Department agrees that the notices that must be provided to borrowers who are approaching loan forgiveness under the IBR, ICR, and Pay As You Earn repayment plans can only be based on information that is available to the loan holder at the time the notice is sent to the borrower and that the timeline for forgiveness could change based on borrower behavior after the notice is sent.

Changes: None.

IBR Plan Maximum Repayment Period

Comments: Some commenters requested that the Department reduce the maximum period after which a borrower who has repaid under the IBR plan may receive forgiveness of the borrower's remaining loan balance from 25 years to 10 years. A small number of other commenters suggested that a borrower's remaining principal balance should be automatically forgiven in IBR when the original principal balance of the loan has been satisfied, regardless of the length of time the borrower has been in repayment.

Discussion: The Department appreciates these comments and understands that commenters want to reduce loan burden for borrowers paying under IBR. However, the Department declines to adopt the commenters' suggestions. Although the Department will continue to examine this issue, we believe the current HEA standard of 25 years of repayment for current IBR and ICR borrowers, and 20 years of repayment for new IBR borrowers on or after July 1, 2014, reflect the Congress' view of an appropriate repayment period prior to a borrower's receipt of loan forgiveness.

Changes: None.

Repayment of FFEL Program Loans Under the Income-Based Repayment Plan (§ 682.215(b)(3))

Comments: Several commenters servicing commercially-held FFEL program loans asked the Department to clarify how the change to § 682.215(b)(3) of the FFEL regulations, which will require FFEL borrowers who choose the IBR plan to repay all of their loans under the IBR plan unless some of the borrower's loans are not eligible for the plan, would apply to borrowers already repaying under the IBR plan. The commenters noted that many FFEL borrowers had excluded IBR-eligible loans when they entered the IBR plan, as permitted by the current FFEL regulations. These commenters recommended that we continue to recognize borrower choices made prior to the effective date of the change. The commenters noted that not recognizing prior borrower choices would require revisions to previously agreed-upon repayment plans without borrower consent or request, and could cause borrower confusion, concern, and possible defaults. The commenters urged the Department to apply the change to borrowers who enter the IBR plan on or after July 1, 2013.

Discussion: We agree that a borrower's choice made prior to the effective date of the regulatory change should continue to be recognized and that the change should apply to borrowers who begin repayment of a loan under the IBR plan on or after July 1, 2013.

Changes: Section 682.215(b)(3) has been revised to specify that the requirement that borrowers entering the IBR plan repay all of their loans under that plan, except for those that are ineligible for IBR, applies to borrowers who elect the IBR plan on or after July 1, 2013.

Spousal Consent for Loan Holder Access to NSLDS Information (§ 682.215(e)(1)(iii)(A))

Comments: Several commenters requested that the proposed regulation that requires a borrower applying for IBR to provide consent to a loan holder's access to the borrower's spouse's information in the National Student Loan Data System (NSLDS) be modified to clarify that the borrower's spouse, not the borrower, must authorize such access. Other commenters recommended that a comparable provision be added to the IBR and ICR regulations in the Direct Loan program.

Discussion: We agree with the commenters that the spouse, not the borrower, must authorize a loan holder's access to NSLDS information on the spouse's loans in cases where the lender does not hold one of the spouse's loans and would otherwise not have authority to access the information. A comparable provision is not required in the Direct Loan program regulations because the Secretary has access to all borrower data in NSLDS.

Changes: Section 682.215(e)(1)(iii)(A) has been revised to provide that the borrower must ensure that the borrower's spouse has provided the necessary consent for the loan holder to access NSLDS information on the spouse's eligible loans to determine the borrower's eligibility for IBR.

Executive Order 12866

Regulatory Impact Analysis

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

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

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

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

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

This regulatory action will have an annual effect on the economy of more than $100 million because the availability of the Pay As You Earn repayment plan is estimated to transfer from the Federal government to students in reduced principal and interest payments over the 2012 to 2021 loan cohorts approximately $10.6 billion and $10.2 billion on a cash basis at 3 percent and 7 percent discount rates, respectively. As discussed in the Net Budget Impacts section, this is expected to have a net budget impact of approximately $2.1 billion over the 2012 to 2021 loan cohorts. Therefore, this final action is economically significant and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action. The agency believes that the benefits justify the costs.

We have also reviewed these regulations pursuant to Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, the Office of Information and Regulatory Affairs within the Office of Management and Budget emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

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

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

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

The Need for Regulatory Action

The Department is responsible for administration of the Federal student loan programs authorized by title IV of the HEA. Federal student loans are a crucial element in providing important opportunities for Americans seeking to expand their skills and earn postsecondary degrees and certificates. One of the Department's goals is to ensure that its regulations promote a transparent and consistent administration of title IV programs. Borrowers should be able to easily understand their rights, responsibilities, and options. Sometimes statutory revisions or Administration priorities require the Department to revise its policies and regulations. With these final regulations, the Department enhances the income-driven repayment options available to borrowers so borrowers can repay their loans, student loan debt will be manageable, and students will continue to pursue postsecondary education that makes sense for them. In addition, the Department will improve the TPD process to increase efficiency and consistency in the treatment of borrowers.

The passage of the SAFRA Act (Pub. L. 111–152) ended the origination of new FFEL program loans and amended the statutory provisions governing the IBR plan so that the discretionary income caps and loan forgiveness eligibility periods would be reduced effective July 1, 2014, for new borrowers who choose the IBR plan.

Student loan indebtedness and tuition costs have become major issues not only in the media but at the kitchen table in millions of American households. In light of recent economic conditions, many Americans remain worried that postsecondary education is becoming, or has become, unaffordable for themselves and their children. Recognizing that fear of unmanageable student loan indebtedness may discourage potential students from seeking postsecondary education, Congress enacted, as part of SAFRA, President Obama's proposal to lower the IBR student loan payment cap to 10 percent of the borrower's discretionary income and to provide loan forgiveness after 20 years of qualifying payments for new borrowers in 2014.

Concerned about the current and future students with student loans, President Obama proposed the Pay As You Earn repayment plan initiative. This proposal revises the ICR repayment plan in the Direct Loan program to reflect the statutory changes made to IBR by SAFRA. Eligible borrowers (new borrowers on or after October 1, 2007, with new loans in 2012) would be able to take advantage of the 10 percent income cap and the shorter loan forgiveness period in the fall of 2012 instead of waiting until 2014 for the statutory changes to IBR.

To achieve the goals of the President's Pay As You Earn initiative and provide the maximum benefit to borrowers, the Secretary is revising the ICR repayment plan while implementing the statutory IBR changes. The revisions offer eligible borrowers lower payments and loan forgiveness after 20 years of qualifying payments. As discussed earlier in this section, income-based repayment options may encourage higher borrowing and potentially introduce an unintended moral hazard, especially for borrowers enrolled at schools with high tuitions and with low expected income streams. Some commenters disagreed with the inclusion of this moral hazard statement, noting that the aspect of more generous income-based repayment plans causing increased borrowing has not been established. The Department has not found any definitive studies on the matter but since some analysts, academics, and others have suggested the possibility of this inducement effect, we wanted to address it to ensure comprehensive coverage of this issue.

Table 2 summarizes the differences in eligibility between the existing and final IBR and ICR programs.

TABLE 2—SUMMARY OF EXISTING AND FINAL IBR AND ICR PLANS

	Current IBR	Final IBR (with 07/01/2014 statutory changes)	Current ICR (proposed ICR–B)	Final Pay as You Earn repayment plan
Loan Program and Eligible Borrowers.	• Direct Loan program • FFEL program	• Direct Loan program only • Only new borrowers as of July 1, 2014: ○ Must have no outstanding Direct Loan or FFEL balance as of July 1, 2014 or on the date a new Direct Loan is received after July 1, 2014.	• Direct Loan program only (FEEL Borrowers who consolidate into the Direct Loan Program are considered Direct Loan borrowers and therefore qualify).	• Direct Loan program only. • Only new borrowers in 2008 who receive a Direct Loan disbursement in 2012 or later: ○ Must have no outstanding Direct Loan or FFEL balance as of October 1, 2007 or on the date a new Direct Loan or FFEL program loan is received after October 1, 2007; *and* ○ Must receive a disbursement of a Direct Loan on/after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on/after October 1, 2011. • FFEL new borrowers in 2008 may qualify through consolidation into the Direct Loan program.

TABLE 2—SUMMARY OF EXISTING AND FINAL IBR AND ICR PLANS—Continued

	Current IBR	Final IBR (with 07/01/2014 statutory changes)	Current ICR (proposed ICR–B)	Final Pay as You Earn repayment plan
Graduate/Professional PLUS Loans eligible?	Yes	Yes	Yes	Yes.
Parent PLUS Loans eligible?	No	No	No	No.
Consolidation Loans that repaid Parent PLUS Loans eligible?	No	No	Yes	No.
Partial Financial Hardship Required?	Yes	Yes	No	Yes.
Partial Financial Hardship Definition.	10-year standard payment amount on eligible loans (annual amount owed) exceeds 15% of difference between AGI and 150% of poverty line amount.	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount.	N/A	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount.
Forgiveness Period	25 years of qualifying payments/months of economic hardship deferment.	20 years of qualifying payments/months of economic hardship deferment.	25 years of qualifying payments/months of economic hardship deferment.	20 years of qualifying payments/months of economic hardship deferment.
Estimated Borrowers Eligible for Participation (2012–2021 cohorts in millions) *.	1.53	1.03	0.39	1.67.

* **Note:** While the figures represent the 2012–2021 cohorts, the numbers only apply to those cohorts eligible for the particular program above those already eligible for existing programs. For example, the 1.03 million for the Proposed Revised IBR only includes eligible new borrowers after July 1, 2014.

The Department's current process for considering applications for TPD discharges on student loans has also been reviewed for efficiencies and improved consistency in response to concerns raised by the Department and external parties. Borrowers and advocates particularly have described the application process and monitoring period requirements as burdensome. The revisions will address these problems by requiring borrowers to submit applications for disability discharges directly to the Secretary, rather than to individual lenders; ensuring that borrowers whose applications for a discharge are rejected receive a more thorough explanation of the reasons for the rejection and adequate information about their options; permitting a TPD discharge based on a borrower's SSA notice of award for SSDI or SSI benefits indicating that the borrower's eligibility for disability benefits will be reviewed on a five- to seven-year schedule, which classifies the borrower as permanently impaired—medical improvement not expected. Borrowers will still be subject to the three-year discharge review that is currently in place; and, simplifying the income verification process during the three-year monitoring period. The final regulations also eliminate the necessity for FFEL lenders and guaranty agencies to evaluate disability discharge applications and ensure that the disability discharge application process is also expedited for veterans.

Beyond those details, Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' In this case, there is indeed a compelling public need for regulation. The Secretary recognizes the growth in the number of students enrolled in college, the ongoing increase in college costs, the resulting increased need for student loans, and the potential difficulty in repaying them. The Secretary's goal in regulating is to provide borrowers with maximum repayment options to ensure that borrowers are able to repay their debt and to improve the process for considering applications for disability discharges on Federal student loans.

As noted in the NPRM there has been a steep increase in the cost of tuition in America. According to data collected by the Department's National Center for Education Statistics (NCES), the cost of tuition, room and board for full-time students at America's 4-year public and private non-profit institutions rose by 140% between 1980 and 2010 when controlled for inflation.[1] The average published tuition and fees at 4-year public universities increased by 8.3 percent between the 2010–2011 and 2011–2012 academic years, according to College Board.[2] The tuition pinch is not limited to undergraduate studies. The average price of tuition and required fees at graduate and professional schools has doubled since 1988, even when adjusted for inflation.[3]

As discussed in detail in the preamble to the NPRM, the combination of increased enrollment and college costs has contributed to a significant increase of student loan debt in America. Enrollments have grown as more students are enrolling in college each

[1] *This percentage was calculated by the Department using data collected from* Thomas D. Snyder and Sally A. Dillow, *Digest of Education Statistics 2010,* (pgs 493–495) Education (U.S. Department of Education, April 2011), *http://nces.ed.gov/pubs2011/2011015.pdf.*

[2] *Trends in College Pricing 2011, Table 4A: Average Tuition and Fees in Current Dollars, 1981–82 to 2011–12* (College Board Advocacy and Policy Center, nd.), *http://trends.collegeboard.org/college_pricing/report_findings/indicator/Tuition_Fees_Over_Time.*

[3] Snyder and Dillow, *Digest of Education Statistics 2010,* page 498.

year with hopes of building a career or changing job fields. This has led to a growth in outstanding debt as students are increasingly relying on Federal student loans. According to data collected by NCES, 34.9 percent of all undergraduates took out a Federal student loan in the 2007–2008 academic year [4] compared to 19.9 percent in the 1992–1993 academic year.[5]

While higher levels of student loan debt are indicative of troubling trends with respect to the cost of college, these higher levels simultaneously reflect increased levels of investment in the nation's human capital. These investments yield significant and demonstrable benefits not only for individuals but for the nation as well. College graduates on average fare better economically than their high school educated counterparts as discussed in detail in the Need For Regulatory Action Section of the NPRM. According to the Bureau of Labor Statistics, even those individuals who attended college but never received a degree have higher weekly earnings, on average, than those with only a high-school diploma. For the Nation, higher levels of educational attainment increase economic productivity and raise gross domestic product, among many other benefits.

Even though the economy has begun to strengthen, many recent graduates are finding it challenging to obtain employment and garner wages at or near average levels. A March 2011 letter published by the Federal Reserve Bank of San Francisco, for example, highlighted that the unemployment rate of recent graduates has doubled over the past few years.[6] Even for recent graduates who obtain employment, prior research has shown that it can take several years for those entering the workforce during a recession to reach normal wage levels.[7] For these graduates and in particular, for borrowers who do not complete a degree, repaying their student loans can be especially daunting.

The revised ICR and IBR plans will provide borrowers with improved income-related payment management options. They will also encourage borrowers to honor their debt commitments by offering loan forgiveness after a significant period of repayment in an income related payment plan.

In addition to implementing statutory changes in the IBR plan and revising the ICR plan, the final regulations will also seek to solve well-documented problems with the process for evaluating discharge applications. The current process by which borrowers apply for a discharge has led to inconsistencies in determining eligibility and created hardships for eligible borrowers. Currently, borrowers who have suffered a TPD that leaves them unable to fulfill their loan obligation contact the holders of their loans and apply for a discharge. Lenders have different processes and this has led to discrepancies in the way loan holders are processing and assessing borrowers' eligibility for TPD. Also, the current reporting requirements during the monitoring period have proved to be burdensome on borrowers with disabilities and many who may meet all other eligibility requirements are having their loans reinstated due to their failure to meet the current reporting requirements.

The Secretary is revising the regulations governing disability discharges in the different title IV student loan programs to standardize the process. Under the final regulations, all discharge applications will be submitted directly to the Secretary. The Department's proposal eliminates the requirement that each of a borrower's loan holders (and guaranty agencies, in the FFEL program) review the borrower's disability discharge application. Through this process, the Secretary will ensure consistency in the administration of the disability discharge process. A more detailed analysis of these changes is provided in the *Significant Final Regulations* section of this preamble.

Executive Order 13563, Section 4, notes that ''Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.'' Consistent with this section of the Executive Order, the Department is enhancing the information available to prospective and enrolled students, providing better guidance, and offering more feasible loan repayment options through these final regulations.

Discussion of Costs, Benefits, and Transfers

Consistent with the principles of Executive Orders 12866 and 13563, the Department has analyzed the impact of these regulations on students, businesses, the Federal Government, and State and local governments. The analysis rests on the projected impact of the regulations. The benefits and costs are discussed below.

Income-Contingent Repayment

The Pay As You Earn repayment plan will cap payments for eligible borrowers at 10 percent of discretionary income divided by 12. This is a reduction from the current 15 percent cap and will be consistent with the statutory changes to IBR that become effective in 2014. The Pay As You Earn repayment plan will be available to eligible borrowers in the fall of 2012. A detailed breakdown of the qualifications needed for participation in either plan is provided earlier in Table 2.

Accurately predicting or forecasting transfers or costs from the ICR changes is difficult because these costs depend heavily on borrower trends and participation. Traditionally, there has been low participation in ICR, and many participants only participated because they wanted to consolidate defaulted loans. The Pay As You Earn repayment plan may see significant enrollment as a result of the publicity it has received as part of the President's student loan repayment initiative. Economic recovery will also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave ICR for another repayment plan, particularly if they no longer demonstrate a PFH. There was an in-depth analysis of how first year payments under the Pay As You Earn repayment plan (referred to as ICR–A in the NPRM) would compare to first year payments under ICR (referred to as ICR–B in the NPRM), standard, and extended payment plans in the NPRM; interested parties can refer to that document for more information.

The following chart compares first year payments under the Pay As You Earn repayment plan and ICR for borrowers based on family size and

[4] Thomas D. Snyder and Sally A. Dillow, *Digest of Education Statistics: 2010* (United States Department of Education, National Center for Education Statistics, April, 2011), *http://nces.ed.gov/programs/digest/d10/tables/xls/tabn354.xls.*

[5] Thomas D. Snyder, Digest of Education Statistics, 1995 (United States Department of Education, National Center for Education Statistics, October, 1995), *http://nces.ed.gov/programs/digest/d95/dtab309.asp.*

[6] Bart Hobijn, Colin Gardiner, and Theodor Wiles, *Recent College Graduates and the Labor Market,* March 21, 2011, *http://www.frbsf.org/publications/economics/letter/2011/el2011-09.html.*

[7] Philip Oreopoulos, Till von Wachter, and Andrew Heisz, *The Short- and Long-Term Career Effects of Graduating in a Recession: Hysteresis and Heterogeneity in the Market for College Graduates,* Economic (The National Bureau of Economic Research, April 2006), *http://www.nber.org/papers/w12159.*

income. ICR payments are calculated using the lesser amount of the amount borrowers would pay if they repaid their loan in 12 years multiplied by an income percentage factor that varies with their adjusted gross income (AGI), or the difference between AGI and the applicable HHS poverty guideline amount, divided by 12. Borrowers can calculate what their payments would be under ICR (referred to as ICR–B in the NPRM) on the Federal Student Aid Web site at (*http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp*). Pay As You Earn repayments are calculated using 10 percent of the difference between the subject's AGI and 150 percent of the applicable HHS poverty guidelines amount, divided by 12 (the Pay As You Earn repayment plan requires PFH for initial qualification so first-year calculations will assume PFH).

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A BORROWER WITH $26,000 IN STUDENT LOANS

Income		Family size					
		1	2	3	4	5	6
$15,000	ICR	$64	$0	$0	$0	$0	$0
	PAYE	0	0	0	0	0	
20,000	ICR	147	81	15	0	0	0
	PAYE	27	0	0	0	0	
25,000	ICR	184	165	99	33	0	0
	PAYE	69	19	0	0	0	
30,000	ICR	204	204	182	116	50	0
	PAYE	110	61	11	0	0	0
35,000	ICR	221	221	221	199	133	67
	PAYE	152	103	53	4	0	0
40,000	ICR	235	235	235	235	217	151
	PAYE	194	144	95	45	0	0
45,000	ICR	249	249	249	249	249	234
	PAYE	235	186	136	87	37	0
50,000	ICR	264	264	264	264	264	264
	PAYE	277	228	178	129	79	30

Sample repayment amounts are based on an interest rate of 6.80%.

The Pay As You Earn repayment plan offers loan forgiveness after 20 years of payments compared to 25 years under ICR. Consequently, eligible borrowers may have as much as five fewer years of payments under the Pay As You Earn repayment plan. The effects of this change will also depend on borrower trends, enrollment, and possibly the economy.

As mentioned earlier, the ability of recent graduates to find suitable employment may play a large role in determining the participation rate of the Pay As You Earn repayment plan and ICR. The job struggles of new graduates have been well documented. Those borrowers who enter into lower paying jobs or struggle to find employment may benefit from participating in the Pay As You Earn repayment plan. The average single borrower entering repayment with a $30,000 salary and 6.8 percent interest rate could qualify for the Pay As You Earn repayment plan with approximately $10,000 in debt.

Leaving ICR open to all Direct Loan borrowers ensures that the majority of borrowers will have an income-driven payment option. This may be particularly important for borrowers employed in jobs eligible for public sector loan forgiveness after 10 years but who do not qualify for IBR or the Pay As You Earn repayment plan. This will allow borrowers to choose which repayment plan is the best option for them. The formulas and calculators for the standard and fixed payment plans can be found at (*http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp*)

All of the examples used above are only estimates. While these examples are able to paint a relatively clear picture of how the final regulations will affect individual borrowers' payments in a given year, they lack the scalability required to show an exact link to the overall budget impact because of the uniqueness of any borrower's circumstances. Initial payments and payments over time will vary based on borrower behavior. ICR borrowers may see their payments fluctuate because of marriage, pay raises, or children. As in IBR, under the Pay As You Earn repayment plan borrowers are re-evaluated annually and payments may rise based on family size and AGI to the point they trigger a 10-year standard payment amount that, depending on the amount of the debt, may result in the borrower either repaying the debt in full before 20 years and receiving no forgiveness or leaving the plan entirely and receiving no forgiveness. Those borrowers who end up with lower payments will have more disposable income and possibly have a net positive impact on the economy. However, some borrowers will pay more money overall in order to have smaller payments up front.

There will also be other small costs and transfers associated with the Pay As You Earn repayment plan. For example, those borrowers under PFH with calculated payments less than $5 will not have to pay at all, while there is a $5 minimum payment under ICR.

Borrowers with a PFH would have $10 monthly payments if their calculated payments are greater than $5 but less than $10. There is no PFH determination under ICR.

Interest will be capped at 10 percent of the original principal balance at the time the borrower enters the Pay As You Earn repayment plan compared to ICR, in which interest is capped at 10 percent of the original principal amount at the time the borrower entered repayment. This may or may not mean lower total loan debts. For married borrowers, joint AGI and eligible loan debt would be used only if the couple files a joint tax return under the Pay As You Earn repayment plan. Current ICR uses joint AGI and eligible loan debt regardless of filing status.

Income-Based Repayment

The statutory changes to the Income-Based Repayment (IBR) Plan reduce the discretionary income payment cap to 10 percent and the loan forgiveness period to 20 years for new borrowers effective July 1, 2014. IBR participants may have lower payments as a result and may be able to take advantage of loan forgiveness. The PFH definition changes from when the 10-year standard payment amount on eligible loans (annual amount owed) exceeds 15 percent of the difference between AGI and 150 percent of the poverty line amount to 10 percent.

Accurately predicting or forecasting the transfers from these changes is particularly difficult because most of them will heavily depend on borrower trends. Economic recovery will also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave IBR for another one of the repayment plans, particularly if they no longer demonstrate PFH.

The chart below shows how first year payments will differ after the 2014 implementation of the IBR revisions. Currently IBR payments are calculated by using 15 percent of the difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.[8] The IBR plan will use 10 percent of the difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A BORROWER WITH $26,000 IN STUDENT LOANS

Income		Family Size					
		1	2	3	4	5	6
$15,000	IBR	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
	IBR-Revised	0	0	0	0	0	0
20,000	IBR	41	0	0	0	0	0
	IBR-Revised	27	0	0	0	0	0
25,000	IBR	103	29	0	0	0	0
	IBR-Revised	69	19	0	0	0	0
30,000	IBR	166	91	17	0	0	0
	IBR-Revised	110	61	11	0	0	0
35,000	IBR	228	154	80	5	0	0
	IBR-Revised	152	103	53	4	0	0
40,000	IBR	291	216	142	68	0	0
	IBR-Revised	194	144	95	45	0	0
45,000	IBR	No-PFH	279	205	130	56	0
	IBR-Revised	235	186	136	87	37	0
50,000	IBR	No PFH	No PFH	267	193	119	44
	IBR-Revised	277	228	178	129	79	30

Sample repayment amounts are based on an interest rate of 6.80%.

Overall, the IBR revisions will offer many benefits. Reduced income caps, PFH payment qualifications, and loan forgiveness periods may encourage more borrowers to acknowledge their loan debt and could possibly decrease the default rate. The savings that eligible borrowers could acquire via reduced payment amounts and loan forgiveness periods will allow borrowers to have more disposable income and will likely have a net positive impact on the economy. Some borrowers may pay more money overall however, to have lower payments up front.

A detailed analysis of how borrowers would fare under the revised IBR plan was included in the Regulatory Impact Analysis section of the NPRM. Please note that all examples used here and in the NPRM are calculated with constant dollars only. Some commenters voiced concerns over how inflation and the annual update of the HHS Poverty Guidelines would affect payment amounts over time. We acknowledge that inflation could affect actual payment amounts over time but any attempt to calculate this would be subjective. Borrowers who participate in the income driven plans will be given information about their options annually during the evaluation process. Any borrower, who wishes to learn more about the HHS Poverty Guidelines or track their annual updates, can visit the HHS Poverty Guidelines Web site at *http://aspe.hhs.gov/poverty/index.shtml.*

As mentioned earlier, borrowers who no longer demonstrate PFH may very well opt to leave IBR for another payment plan. The final regulations will allow a borrower to use forbearance and pay less than the standard payment when leaving IBR.

Total and Permanent Disability Discharge

The Department believes that the streamlined TPD discharge process will provide many benefits to borrowers.

The final regulations will—

• Simplify the process for the borrower;

• Permit a TPD discharge based on a borrower's SSA disability notice of award for SSDI or SSI benefits indicating that the borrower's eligibility for disability benefits will be reviewed on a five- to seven-year schedule, which classifies the borrower as permanently impaired—medical improvement not expected. Borrowers will still be subject to the three-year discharge review that is currently in place.

• Establish a single point of contact for the borrower throughout the disability discharge process;

• Reduce the time needed to process applications;

• Provide more consistency in eligibility determinations;

• Provide more uniformity in the communications sent to borrowers throughout the process; and

• Ensure that all of a borrower's title IV loans that are eligible for a TPD discharge are discharged at the same time, reducing instances of ''straggler'' loans that the borrower may forget to include when applying for discharge of the borrower's other title IV loans.

By ensuring that borrowers whose discharge applications are denied have adequate information about the reasons for the denial and their future options,

[8] *Repayment Plans and Calculators,* Government, n.d., *http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp.*

borrowers will be able to make better informed decisions and possibly correct their applications if denial is a result of applicant error. This may reduce the number of technically eligible borrowers who fail to have their loans discharged. Increasing the number of discharged loans could lead to an increased transfer of funds to borrowers as they would not be required to make loan payments.

By developing an OMB-approved form for income reporting purposes, the Secretary will simplify the post-discharge monitoring process and possibly reduce the number of otherwise eligible borrowers with disabilities who have their loans reinstated. Currently, a large proportion of discharged borrowers end up with their loans reinstated because of failure to submit adequate information during the post-discharge monitoring period. By reducing the number of borrowers with disabilities who have their loans reinstated for their failure to provide income information, but who may be otherwise eligible, the Secretary will provide economic relief for many of the country's most vulnerable citizens.

In 2011, approximately 78,000 borrowers applied for the TPD discharge of 179,454 loans across the Direct, FFEL, and Perkins loan programs. The revised TPD process will offer many benefits to borrowers with disabilities and possibly reduce the number of reinstatements. The increase in applications and discharges that could occur as an incentive of the simplified process, would lead to a transfer of funds from the Federal Government to borrowers through the elimination of their debt. Also, by allowing direct application to the Secretary, all applications will be reviewed according to the same standard. This will drastically reduce the chance of inconsistencies in the review process. The elimination of multiple medical evaluations will relieve administrative burden on title IV providers and reduce the application review time.

Also, the Department believes that veterans will benefit because the changes to the non-veterans TPD discharge will also apply to the process for disability discharges based on VA documentation.

Like those applying with documentation from the VA, borrowers using the SSA notice of award for SSDI or SSI benefits that indicates a continuing medical review period of 5-to-7 years as the basis for a TPD discharge will benefit from the process changes such as the single application point for all loans and enhanced uniformity in communications.

Borrowers will benefit from the elimination of the requirement that a physician provide a letter requesting more time for the borrower to submit a TPD discharge application.

As noted, while the Department does believe that the final regulations will ultimately benefit truly eligible borrowers, it cannot accurately predict applicant behavior as a result.

Regulatory Alternatives Considered and Analysis of Significant Comments

Alternatives to the regulations were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the proposed regulations under both the Regulatory Impact Analysis and the Reasons sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the proposed regulations, alternatives are also considered elsewhere in the preamble to these final regulations under the Discussion sections related to each provision. We did not receive any comments related to the Regulatory Impact Analysis discussion of these alternatives.

As discussed above in the Analysis of Comments and Changes section, the final regulations reflect minor revisions in response to public comments. None of these changes result in revisions to cost estimates prepared for and discussed in the Regulatory Impact Analysis of the proposed regulations.

One alternative considered in response to public comments was changing the date for defining a ''new borrower'' and a ''new loan'' for eligibility for Pay As You Earn repayment plan from the Federal fiscal year basis with an October 1 start to an academic year or calendar year basis to be more consistent with other dates governing the loan programs and to prevent confusion for students. As discussed in the NPRM, a cut-off point for eligibility for Pay As You Earn repayment plans is required and from the budgeting perspective, the Federal fiscal year is the point for determining loan cohorts. Student confusion should be limited by the Web site that will inform them of the repayment plans for which they may be eligible and will make the dates clear. The Department estimated that an additional 90,000 borrowers would be eligible for Pay As You Earn repayment plans if the date for defining a new borrower was changed from October 1, 2007, to July 1, 2007, and the estimated cost for expanding Pay As You Earn repayment plans to these borrowers would be approximately $125 million over the 2012 to 2021 loan cohorts. While the suggested change is a reasonable alternative, the Department believes the use of the Federal fiscal year is appropriate and balances the offering of an improved ICR option to eligible borrowers and the resources available to support the program.

Another alternative considered in response to proposals in public comments was changing the capitalization of accrued interest for students who are removed from IBR or Pay As You Earn repayment plan because they fail to submit their annual paperwork on time. Under current regulations, students who do not submit the required income and family size paperwork on time so that the borrower's PFH can be determined by the borrower's annual deadline, are treated as having elected to end paying under IBR and are subject to the capitalization of all accrued interest. The proposed and final regulations provide a 10-day grace period from the paperwork submission deadline and provide for enhanced borrower notifications about the annual paperwork requirements. Many commenters argued that capitalization of all accrued interest is too great a penalty for late submission of annual paperwork and proposed several options to reduce the effect on borrowers. The alternatives the commenters proposed included: limiting capitalization to the interest accrued on the loan between day 11 after the paperwork submission deadline to the day the borrower's new payment is calculated; applying a cap on overall capitalization in IBR; authorizing lenders to limit interest capitalization for exceptional circumstances; requiring lenders to grant forbearance for overdue payments for all late borrowers; not capitalizing accrued interest associated with past due payments for this period; and recognizing payments that continue to be made for IBR/ICR and PSLF forgiveness.

While the Department acknowledges that capitalization of accrued interest is a significant consequence for failing to submit the required annual paperwork within the timeframe allowed, the proposed alternatives do not work because of operational implications that are discussed in the *Analysis of Comments and Changes* section of the preamble related to this subject. The improved notifications and grace period should reduce the number of borrowers affected by the capitalization provision for the reason of late paperwork submission.

Additionally, as discussed in the *Analysis of Comments and Changes* in the preamble, the Department will accept an SSA disability notice of award for SSDI or SSI benefits indicating that the borrower's next scheduled disability review will be within five to seven years, which classifies the borrower as permanently impaired with medical improvement not expected, as proof of the borrower's TPD. The Department believes this SSA standard for permanent impairment overlaps with the Department's existing standard and that this change will reduce the application burden on borrowers who have already gone through the SSA disability application process. This could also reduce the administrative burden on the Department in processing TPD applications.

Net Budget Impacts

The final regulations are estimated to have a net budget impact of $2.1 billion in subsidy cost over the 2012 to 2021 loan cohorts. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year. As discussed in the *Regulatory Alternatives Considered and Analysis of Significant Comments,* some commenters suggested changes to the dates for defining eligibility for the new ICR–A plan, amending the capitalization of accrued interest for borrowers who submit their annual income and family size paperwork late, and using SSA determinations as proof for a TPD discharge. None of the changes the Department made in response to those proposals had an effect on the *Net Budget Impact* section included in the NPRM.

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: for-profit institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

Income-Contingent Repayment

As described in the NPRM, the budget impact in this package of regulations is related to the changes in the ICR plan. These final regulations, based on the President's Pay As You Earn initiative, create the Pay As You Earn repayment plan, a new income-contingent option that mirrors the changes made to the IBR plan by SAFRA. The Pay As You Earn repayment plan allows new borrowers in FY 2008 or later with a new loan in FY 2012 or later who demonstrate a PFH to use an income contingent repayment plan based on 10 percent of their discretionary income and with a 20-year forgiveness period. The terms and conditions of the Pay As You Earn repayment plan are based on IBR, including the treatment of married borrowers and the timing of interest capitalization, except the Pay As You Earn repayment plan maintains the cap on interest capitalization from existing ICR and does not require borrowers leaving the plan to make a payment under standard repayment. The existing ICR plan would remain available for those borrowers who do not qualify for or choose the Pay As You Earn or IBR repayment plans because of timing, not demonstrating PFH, or individual preference. The availability of the Pay As You Earn repayment plan, with its reduced income percentage and shorter forgiveness period, is estimated to cost $2.1 billion over the 2012 to 2021 loan cohorts.

In evaluating the changes to the ICR and IBR programs, the Department assumes that, if possible, income-contingent borrowers would elect the Pay As You Earn repayment plan given its more generous income and forgiveness provisions. Based on this, the Department estimates that between 2012 and 2021 approximately 1.67 million borrowers not already eligible for the improved IBR program will choose the Pay As You Earn repayment plan. The availability of the Pay As You Earn repayment plan results in an estimated average savings of $4,250 per borrower. Assuming all those in the Pay As You Earn repayment plan remained in the plan, the Department estimates that approximately 13 percent would receive public sector loan forgiveness, 39 percent would receive forgiveness after twenty years of qualifying payments, and 48 percent would pay-off their balances. (Note: the budget estimate of $2.1 billion takes into account prepayment through consolidation, defaults, and death/disability/bankruptcy discharges). The actual number of borrowers receiving forgiveness will be significantly less than would be obtained by multiplying the 1.7 million borrowers estimated to repay under ICR by the above percentages since not all borrowers will remain in ICR. Currently, the Department estimates that approximately 400,000 borrowers from cohorts 2012 through 2021 will ultimately receive forgiveness. In general, those borrowers receiving forgiveness have higher balances as payments based on income are more likely to cover lower balances. Those receiving forgiveness have an average original balance of approximately $39,500 and receive forgiveness of approximately $41,000 as their payments tend to cover interest owed so they end up with balances forgiven close to the original debt.

As discussed in the NPRM, when the assumption for loan forgiveness is increased as a result of a policy the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a Net Present Value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the Pay As You Earn repayment plan (referred to as the ICR–A repayment plan in the NPRM) is estimated to cost approximately $2.1 billion for the cohorts from 2012 to 2021 as shown in Table 3.

TABLE 3—ESTIMATED OUTLAYS FOR COHORTS 2012–2021

Cohorts	2012	2013	2014	2015	2016	2018	2019	2020	2021	Total
Budget Authority	134	199	208	255	235	239	249	224	177	2,173
Outlays	114	191	208	253	235	234	254	218	178	2,132

Income-Based Repayment

The budgetary impact of the changes to the IBR program that implement the statutory changes in SAFRA are incorporated into the budget baseline. The Department estimates that approximately one million new borrowers from the 2014 to 2021 cohorts would benefit from the changes to IBR made by SAFRA. The final regulations also include process clarifications related to the ultimate loan forgiveness and the timing of notices and annual certification. These changes are expected to improve the servicing for IBR borrowers and provide guidance before the first set of eligible borrowers reach the forgiveness point, but are not expected to have a budgetary impact.

Total and Permanent Disability

As detailed in the NPRM, the final regulations will establish a single application process through the Department for borrowers seeking a TPD discharge of their Federal loans, specify requirements for more detailed information in TPD discharge denial letters, and modify the process and documentation requirements for the post-discharge monitoring period. Additionally, as described in the *Analysis of Comments and Changes* section of the preamble, in response to comments about aligning the Department's determinations of disability with those of other agencies and allowing borrowers with a disability determination from the SSA to receive a TPD discharge, the Department will accept an SSA disability notice of award for SSDI or SSI benefits indicating that the borrower's next scheduled disability review will be within five to seven years, which classifies the borrower as permanently impaired with medical improvement not expected, as proof of the borrower's TPD. The Department believes this will reduce the application burden on borrowers who have already gone through the SSA process. Because the final regulations are not expected to expand the pool of borrowers potentially eligible for discharge, there is no expected effect on the Federal student loan budget. The Department will continue to closely monitor the TPD discharge process and any significant changes in the frequency or magnitude of disability discharges will be reflected in future budget estimates.

In the NPRM, the Department requested comments about the estimated net budget impacts described above. No such comments were received.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the costs, benefits, and changes in annual monetized transfers as a result of the revisions to the ICR repayment plan as reflected in these final regulations. Expenditures are classified as transfers from the Federal Government to borrowers in the revised ICR repayment plan. The transfers presented below represent the annualized estimated reductions in principal and interest payments from borrowers in cohorts 2012 to 2021 in the Pay As You Earn plan on a cash basis and not the subsidy cost presented in the *Net Budget Impacts* section of the preamble. The nominal dollars of principal and interest payment reductions were converted to constant dollars using an estimated GDP inflator of 1.9 percent.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES AT 3 PERCENT AND 7 PERCENT DISCOUNT RATES

[In millions]

Category	Costs
Costs of compliance with paperwork requirements	$1.34 (7%). 1.35 (3%).
Category	**Transfers**
Annualized reduced payments to Federal Government from borrowers in the Pay As You Earn repayment plan	$1,357 (7%) 1,210 (3%)

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations are concerned with the relationship between certain Federal student loan borrowers and the Federal government, with some of the provisions modifying the servicing and collections activities of guaranty agencies and other parties. The Department believes that the entities affected by these final regulations do not fall within the definition of a small entity. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. In the NPRM, the Secretary invited comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and requested evidence to support that belief. No comments were received.

Paperwork Reduction Act of 1995

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

Sections 674.61, 682.215, 682.221, 682.402, 685.213, and 685.215 contain information collection requirements. Under the PRA, the Department submitted a copy of these sections to OMB for its review at the time the Department published the notice of proposed rulemaking.

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.

These final regulations display the control numbers assigned by OMB to any information collection requirements adopted in the final regulations.

Total and Permanent Disability Discharge Application Process Based on a Physician's Certification (§§ 674.61(b)(2), 682.402(c)(2) and 685.213(b))

These final regulations revise §§ 674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL program regulations to require Perkins Loan and FFEL borrowers to apply directly to the Department for TPD discharges. In the Direct Loan program, borrowers will continue to apply directly to the Department for TPD discharges, as they do under the current Direct Loan program regulations.

Under the final TPD discharge process, if a Perkins Loan program school or a FFEL lender is contacted by a borrower intending to apply for a TPD discharge, the school or lender would provide the borrower with the information needed to apply to the Department for the discharge. Under the current regulations, when a borrower has loans held by two or more loan holders, the borrower must complete and submit a separate TPD application for each holder. Under the streamlined process in these final regulations, a borrower would submit one TPD discharge application to the Department, eliminating the need for borrowers to submit separate discharge applications to each of their loan holders. We determined that in 2011 the number of TPD applications was as follows:

Year	Program	Number of borrowers	Number of Loans	Number of loans/borrower
2011	Direct Loans	29,777	65,823	
2011	FFEL Loans	48,518	114,040	
2011	Perkins Loans	95	95	
		78,390	179,958	2.3

Borrower Burden: Under currently approved OMB 1845–0065—Discharge Application: Total and Permanent Disability, the average amount of time for the borrower to complete and submit an application is estimated to be 30 minutes (0.5 hours) per application. These regulations provide that a borrower with a single loan holder must still provide the Secretary with a single TPD discharge application for all the affected title IV, HEA program loans held by that holder. However, borrowers with multiple loan holders would no longer have to complete and submit TPD discharge applications to each separate loan holder but instead will submit a single application to the Secretary. Under currently approved OMB 1845–0065, there are 30,000 respondents annually with 30,000 responses (applications) annually times 0.5 hours to yield a total burden of 15,000 hours to borrowers. Information from the 2011 award year indicates that the number of borrowers applying for TPD discharges has increased to 78,390 borrowers on 179,958 title IV, HEA loans. Using the 2011 number of loan applications and the current process requiring borrowers to file applications separately with each lender, the burden would have expanded to 89,979 hours (179,958 times 0.5 hours equal 89,979 hours). That would have created an increase in burden of 74,979 hours (89,979 burden hours in 2011 minus 15,000 hours under the current collection).

However, because the final regulations do not require borrowers to file separate applications for each lender, the increase in burden is significantly less. We estimate that half of the 48,313 increase in the number of borrowers (24,157 borrowers) have all of their 24,157 title IV, HEA loans held by single holders. Therefore, the burden associated with the group of borrowers with single holders is an increase of 12,079 burden hours (24,157 times 0.5 hours per application).

We estimate that the other half of the 48,313 increase in the number of borrowers (24,156 borrowers) have multiple holders for their 125,801 title IV, HEA loans. We obtained this number of loans by taking the 179,958 affected loans in 2011 and subtracting the 30,000 loans already accounted for in the current ICR. We then subtracted the 24,157 loans held by 24,157 borrowers that hold only a single loan, which leaves the remaining 125,801 loans held by multiple holders. Under the final TPD application process the remaining 24,156 borrowers with loans held by multiple holders would only need to submit a single TPD application. Therefore, the burden associated with the group of borrowers with multiple holders is an increase of 12,078 burden hours (24,156 times 0.5 hours per application). The total amount of burden for these two groups of borrowers is an increase of 24,157 burden hours under OMB Control Number 1845–0065.

Loan Holder Burden: Under the final regulations, lenders and guaranty agencies will no longer perform a number of functions in the TPD discharge process. Lenders and guaranty agencies will no longer: Distribute the TPD discharge application, receive the completed and submitted TPD applications, review the completed and submitted TPD application forms, evaluate the TPD application forms, request additional information necessary to complete or resolve open issues regarding the TPD applications, review and evaluate supplemental information provided by the applicants, and make a determination whether the application supports the conclusion that the borrower is totally and permanently disabled.

Under the currently approved burden analysis in OMB 1845–0019 for the Perkins Loan program, there are 31 hours of burden attributed to this regulation (62 respondents with 62 responses times 0.5 hours per response). Information from the 2011 award year indicates that the current annual number of Perkins Loan borrowers applying for TPD discharge has increased from an average of 62 to 95 borrowers. Thus, absent these proposed regulations, the burden hours would increase to 47.5 hours.

Instead, the final regulations in §§ 674.61(b)(2) and 682.402(c)(2) require institutions that participate in the Perkins Loan program and FFEL program loan holders to provide borrowers seeking a TPD discharge with information needed for the borrower to notify the Secretary. Since this is likely to be a highly automated process, we estimate that the average amount of time to provide a borrower with the required referral information to take 0.03 hours (2 minutes) per request. At the estimated notification rate of 0.03 hours per borrower, the total burden is 3 hours (95 borrowers times 0.03 hours). While the number of affected Perkins Loan borrowers increased, this is a reduction in burden of 28 (31 hours in the currently approved collection minus 3 hours) hours under OMB Control Number 1845–0019.

Section 682.402 does not contain any burden attributed to the regulation for the TPD discharge collection of information, nor is there burden attributable to the application process other than that which impacts the borrower completing the application. In the 2011 award year, our data indicate that there were 48,518 FFEL borrowers who applied for TPD discharges on 114,040 loans. Of the total 48,518 borrowers, 18,078 borrowers applied for discharge of 38,742 FFEL loans that were held by the Department, and 30,440 borrowers applied for discharge of 75,298 FFEL loans that were not held by the Department.

Under the previous regulations, we estimated that the holder providing the TPD discharge application and all the other related review and determination processes would take 0.5 hours per application, thus creating 15,220 hours of burden on holders of FFEL loans not held by the Department.

However, under the final regulation in § 682.402(c)(2), the holder only has to provide information to the borrower telling the borrower how to notify the Secretary. Under these regulations, we estimate that providing the required information to the borrower so the borrower can notify the Secretary would take 0.03 hours (2 minutes) per borrower request. At this rate, the total burden is 913 hours (30,440 borrowers times 0.03 hours). This would be a reduction of 14,307 burden hours for lenders (15,220 hours less 913 hours). However, we note that this is not a burden reduction since the current burden had not been previously established. Instead, an increase of 913 hours would be added to OMB Control Number 1845–0020.

As noted earlier, these regulations revise §§ 674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL regulations to require Perkins and FFEL borrowers to apply directly to the Department for TPD discharges. In the Direct Loan program, borrowers continue to apply directly to the Department for TPD discharges.

Under §§ 674.61(b)(2)(v)–(viii), 682.402(c)(2)(iv)–(viii), and 685.213(b)(3), a Perkins Loan, FFEL, or Direct Loan borrower must submit the TPD discharge application certified by a physician to the Department within 90 days of the date of the physician's certification. After receiving the TPD discharge application, the Department notifies the borrower's title IV loan holders that the Department has received the application. This notification directs the borrower's loan holders to either suspend collection activity or to maintain the suspension of collection activity on the borrower's title IV loans. If the application is incomplete, the Department requests the missing information from the borrower or the physician who certified the application.

These changes do not constitute a change in burden for the borrowers because the application process remains virtually the same. However, since the borrower is directed to obtain the application form approved by the Secretary from the Department rather than from the institution in the case of a Perkins loan, or the lender in the case of a FFEL loan, the burden associated with the streamlined TPD discharge application process is transferred to the Department, but since the burden associated with receiving the TPD application with the physician's certification, revaluating the application for completeness, and requesting additional missing information was not estimated under the prior regulations, no burden reduction can be established as a result of the changes in the final regulations.

Changes to the TPD discharge application form must be made to implement the new regulations. The TPD discharge application form currently in use expires on February 28, 2015. These final regulations are effective July 1, 2013. A revised TPD discharge application form associated with OMB Control Number 1845–0065 will be submitted for OMB review in late 2012, thereby ensuring that the public has an opportunity to provide comment upon the newly revised form that will be available for use on or about the effective date of the final regulations.

Under §§ 674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), during the three-year period following a discharge of a title IV loan based on TPD, the borrower must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on an OMB approved form that would be available by the time that these regulations become effective. The form will require a certification from the borrower and will require the borrower to submit documentation to support the certification. The documentation may include income tax returns, documentation of eligibility for Social Security disability benefits, or other documentation that supports the borrower's certification.

These regulations do not specify the content of the form but, as with all OMB-approved forms, the form would be made available for public comment as part of the PRA forms clearance process.

Collectively, the regulatory changes in §§ 674.61 and 682.402 increase burden by 25,042 hours. The burden in OMB Control Number 1845–0065 increases from 15,000 to 24,157. The burden in OMB Control Number 1845–0019 decreases by 28 hours from 31 hours to 3 hours. The burden in OMB Control

Number 1845–0020 increases by 913 hours.

Income-Based Repayment Plan (§§ 682.215(e)(2) and 685.221(e)(2)—Eligibility Documentation, Verification, and Notifications)

Under § 682.215(e)(2), a FFEL loan holder, after making a determination that a borrower has a PFH to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a PFH, sends the borrower a written notification. A portion of the required notifications is established under OMB 1845–NEWA and other information and notifications are included under OMB 1845–0102, the Income-Based/Income-Contingent Repayment Plan Request form.

The required notifications under OMB 1845–NEWA include the following information: The borrower's scheduled monthly payment amount, the time period during which that monthly payment amount will apply (annual payment period); and information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the monthly payment amount is recalculated based on the borrower's request, the loan holder sends the borrower a written notification that includes the borrower's new calculated monthly payment amount and the other information described above.

Using the most recent monthly reports on IBR applications, we examined the number of loans being repaid under IBR that are serviced by the Department's Title IV Additional Servicers (TIVAS). We determined that 71 percent of all of the non-defaulted FFEL loans are held by the Department (and serviced by the TIVAS), with the remaining 29 percent being held by commercial for-profit and not-for-profit holders. Applying these same percentages to the IBR participation data we obtained from the Department's TIVAS, we estimated that the annualized estimated number of commercially held loans being repaid under IBR as 290,268 for the basis of this burden assessment. However, our data does not allow us to further disaggregate this number into the affected entities grouped under Public entities, Private-Not for Profit entities, and Proprietary entities. We estimate that the required notifications above would be highly automated and thus projected an average of 0.08 hours (5 minutes) of burden per IBR applicant, thus 23,221 hours of burden (290,268 times 0.08 hours) of increased burden are added as a new information collection under OMB Control Number 1845–NEWA.

The following required information is provided to the borrower through the Income-Based/Income-Contingent Repayment Plan Request form (OMB 1845–0102). Information about the requirement for the borrower to annually provide income information (and, in some cases for married FFEL program borrowers, information about the eligible loans of the borrower's spouse) and certify family size, if the borrower chooses to remain on the IBR plan after the initial year on the plan; An explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information; and An explanation of the consequences if the borrower does not annually provide the required information.

Section 682.215(e) places further notification requirements on loan holders for subsequent years which are outside the scope of this burden analysis and require future burden analysis.

Loan Forgiveness Processing and Payment

Section 682.215(g) under the FFEL program, clarifies that the loan holder determines when a borrower has met the requirements for loan forgiveness and that the borrower is not required to submit a request for loan forgiveness.

These regulations provide for the loan holder to send the borrower a written notice no later than six months prior to the anticipated date that the borrower would meet the loan forgiveness requirements. This notice explains that the borrower is approaching the date he or she is expected to qualify for loan forgiveness, reminds the borrower that he or she must continue to make scheduled monthly payments, and provides general information on the current treatment of the forgiveness amount for tax purposes, including instructions to contact the IRS for more information.

The prior § 682.215(g)(4) (redesignated as § 682.215(g)(5) under the final regulations) would be revised to clarify that when a loan holder notifies a borrower that the borrower has been determined eligible for loan forgiveness, the borrower must be provided with information on the current treatment of the forgiveness amount for tax purposes and directed to the IRS for more information.

The loan holder determines when a borrower qualifies for loan forgiveness and does not require the borrower to track his or her own progress toward meeting the loan forgiveness requirement and then submit an application for forgiveness. In this section, we are required to analyze and publish the estimated amount of burden that the final regulations place on affected entities (other than the Federal government) as of the effective date of the implementation of the proposed regulation, (assuming that it would occur in the initial year that the final regulations are effective). However, since these additional proposed notification requirements occur 24.5 years after the first income-based repayment loans were placed into repayment (in approximately 2031), they are outside the scope of this burden analysis.

Consistent with the discussions above, the following chart describes the sections of these regulations involving information collections, the information being collected, and the collections the Department will submit to the OMB for approval and public comment under the Paperwork Reduction Act, and the estimated costs associated with the information collections. The monetized cost of the additional burden on lender/guaranty agencies and institutions, using wage data developed using BLS data, available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $593,248.66 as shown below. This cost was based on an hourly rate of $24.61. The monetized cost of the additional burden on students is $431,927.16 based on an hourly rate of $17.88.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control Number and estimated change in the burden	Estimated costs
674.61	This section requires Perkins borrowers to apply directly to the Department for TPD discharges. Under the final regulations, institutions no longer distribute the Total and Permanent Disability Discharge application, receive the completed form, review and evaluate the request, request supplemental information where indicated, evaluate the supplemental application, and make a determination whether the application supports the conclusion that the borrower is totally and permanently disabled. The burden associated with the completion and submission of the application form is found in OMB 1845–0065. Instead, the institution is required to provide the borrower seeking a TPD discharge with the information to notify the Secretary.	OMB 1845–0065 A separate 60-day FEDERAL REGISTER notice will be published to solicit public comment on the form that would be used to collect this information. The burden would increase by 24,157 hours. OMB 1845–0019 The burden would decrease by 28 hours to 3 hours.	$431,927.16 −$689.08
682.215	This section requires FFEL loan holders, after making a determination that a borrower has a PFH to qualify for the IBR plan, to send the borrower for the initial year or any subsequent year, written information to include the scheduled monthly payment amount, the time period during which the monthly payment will apply, and other information.	OMB 1845–NEWA This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit public comment on the form used to collect the information. The burden would increase by 23,221 hours.	$571,468.81
682.402	This section requires FFEL loan holders to provide information to the borrower so the borrower can notify the Secretary about their interest in applying for a TPD discharge.	OMB 1845–0020 The burden would increase by 913 hours.	$ 22,468.93

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

Assessment of Educational Impact

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

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

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

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

Dated: October 23, 2012.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

■ 2. Section 674.61 is amended by:
■ A. Revising paragraph (b).
■ B. Revising paragraph (c).
■ C. Revising paragraph (d).
The revisions read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1).* (1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of paragraph (b) of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower

claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1); or

(B) A Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date—

(A) The physician certified the borrower's application; or

(B) The Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary; and

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(8) *Payments received after the physician's certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(c) *Total and permanent disability discharges for veterans.* (1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) If a veteran notifies the institution that the veteran claims to be totally and permanently disabled as defined in § 674.51(aa)(2), the institution must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge to the Secretary; and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the veteran's title IV loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans.

(iv) The veteran must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veteran Affairs showing that the Department of Veteran Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(iv) and (c)(2)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans that the Secretary has received a total and permanent disability discharge application from the veteran.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the veteran's completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan.

(ii) The institution returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(iii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran or the veteran's representative, and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) An explanation that the institution will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1).

(d) *No Federal reimbursement.* No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.209 [Amended]

■ 4. Section 682.209 is amended in paragraph (a)(6)(v)(C), by adding the words ''through (e)(1)(iii)'' between the citation ''682.215(e)(1)(i)'' and the word ''within''.

■ 5. Section 682.211 is amended in paragraph (f) by:

■ A. In paragraph (f)(15), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation and word ''; or''.

■ B. Adding a new paragraph (f)(16).

The addition reads as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(16) For the periods described in § 682.215(e)(9) in regard to the income-based repayment plan.

* * * * *

■ 6. Section 682.215 is amended by:

■ A. In paragraph (b)(1)(i), adding the words ''the borrower's'' immediately after the words ''outstanding principal amount of''.

■ B. In paragraph (b)(1)(ii)(C), adding the words ''the borrower's'' immediately after the words ''outstanding principal amount of''.

■ C. In the first sentence of paragraph (b)(2), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

■ D. Revising paragraph (b)(3).

■ E. In paragraph (b)(7), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

■ F. In paragraph (b)(8), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

■ G. In the introductory text of paragraph (c)(1), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

■ H. Revising paragraph (d).

■ I. Revising paragraph (e).

■ J. Revising paragraph (f)(1)(i).

■ K. In paragraph (f)(1)(iii), adding the words ''for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment'' at the end of the paragraph, immediately before the punctuation '';''.

■ L. In paragraph (f)(1)(iv), removing the words ''for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan''.

■ M. In the first sentence of paragraph (f)(3)(i), removing the words ''a FFEL Consolidation Loan,'' and adding, in their place, the words ''an eligible FFEL Consolidation Loan,''.

■ N. In paragraph (f)(3)(iv), removing the words ''(f)(1) after qualifying for the income-based repayment plan'' immediately before the punctuation ''.'' and adding, in their place, the words ''paragraph (f)(1) of this section''.

■ O. Revising paragraph (f)(5).

■ P. Revising paragraph (g).

■ Q. Adding an OMB control number parenthetical following the section.

The revisions and addition read as follows:

§ 682.215 Income-based repayment plan.

* * * * *

(b) * * *

(3) If a borrower elects the income-based repayment plan on or after July 1, 2013, the loan holder must, unless the borrower has some loans that are eligible for repayment under the income-based repayment plan and other loans that are not eligible for repayment under that plan, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

* * * * *

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder requires the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) Except as provided in paragraph (d)(2)(ii) of this section, the time remaining under the maximum 10-year repayment period and the amount of the borrower's loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 682.209(h)(2) and the total amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(3) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the FFEL standard repayment plan in accordance with paragraph (d)(2) of this section may request a change to a different repayment plan after making one monthly payment under the FFEL standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for temporarily accepting smaller payments than previously scheduled, in accordance with § 682.211(a)(1).

(e) *Eligibility documentation, verification, and notifications.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i) Provide documentation, acceptable to the loan holder, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income;

(iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans—

(A) Ensure that the borrower's spouse has provided consent for the loan holder to obtain information about the spouse's eligible loans from the National Student Loan Data System; or

(B) Provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information; and

(iv) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iv) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the loan holder recalculates the borrower's monthly payment amount based on the borrower's request, the loan holder must send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification must provide the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the loan holder must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the loan holder does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(5) of this section.

(4) Each time a loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid accrued interest will be capitalized in accordance with paragraph (b)(5) of this section; and

(iii) Information about the borrower's option to request, at any time, that the loan holder redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the loan holder determines that the borrower again has a partial financial hardship, the loan holder must recalculate the borrower's monthly payment in accordance with paragraph (b)(1) of this section and send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the loan holder must send the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section, or if the loan holder determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The loan holder designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the loan holder does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline, unless the loan holder is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(8) If the loan holder receives the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline—

(i) The loan holder must promptly determine the borrower's new monthly payment amount.

(ii) If the loan holder does not determine the new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must prevent the borrower's monthly payment amount from being recalculated in accordance with paragraph (d)(1) of this section and maintain the borrower's current scheduled monthly payment amount until the loan holder determines the new monthly payment amount.

(A) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. Notwithstanding the requirements of § 682.209(b)(2)(ii), unless the borrower requests otherwise the loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(1) of this section.

(B) If the new monthly payment amount is equal to or greater than the borrower's previously calculated income-based monthly payment amount, the loan holder does not make any adjustments to the borrower's account.

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

(9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(f) * * *

(1) * * *

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) of this section, including a monthly payment amount of $0.00, as provided in paragraph (b)(1)(iii) of this section;

* * * * *

(5) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) The loan holder determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness. No later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, the loan holder must send the borrower a written notice that includes—

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

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

(iii) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(2) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness, the loan holder must request payment from the guaranty agency.

(3) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(2) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(4)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(4)(i) of this section, pay the holder the amount of the forgiveness.

(5) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days—

(i) Inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans is satisfied; and

(ii) Provide the borrower with the information described in paragraph (g)(1)(iii) of this section.

(6)(i) The holder must apply the payment from the guaranty agency under paragraph (g)(4)(ii) of this section to satisfy the outstanding balance on those loans subject to income-based forgiveness; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(7) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(8) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

(Approved by the Office of Management and Budget under control number 1845–NEWA.)

* * * * *

■ 7. Section 682.402 is amended by:
■ A. Revising paragraph (c).
■ B. In paragraph (g)(1)(iv), removing the words ''certification of disability described in paragraph (c)(2) of this section'' and adding, in their place, the words ''notification described in paragraph (c)(3)(iii) or (c)(9)(ix) of this section in which the Secretary notifies the lender that the borrower is totally and permanently disabled''.
■ C. In paragraph (g)(2)(i), removing the punctuation and words '', or the lender determines that the borrower is totally and permanently disabled''.
■ D. Redesignating paragraphs (g)(2)(ii), (g)(2)(iii), and (g)(2)(iv) as paragraphs (g)(2)(iii), (g)(2)(iv), and (g)(2)(v), respectively.
■ E. Adding a new paragraph (g)(2)(ii).
■ F. In paragraph (h)(1)(i)(A), adding the punctuation and word '', disability,'' after the word ''death''.
■ G. In paragraph (h)(1)(i)(B), removing the words and punctuation ''disability, closed school,'' and adding, in their place, the words ''closed school''.
■ H. Revising paragraph (h)(1)(v).
■ I. In paragraph (h)(3)(iii)(A), adding the punctuation and word '', disability,'' after the word ''death''.
■ J. In paragraph (h)(3)(iii)(B), removing the words and punctuation ''disability, closed school,'' and adding, in their place, the words ''closed school''.
■ K. Revising paragraph (k)(2)(i).
■ L. Revising paragraph (k)(2)(ii).
■ M. In paragraph (k)(2)(iii), adding the words ''by the Secretary'' after the words ''is determined''
■ N. In paragraph (k)(5)(ii), removing the words ''the guaranty agency makes a preliminary determination'' and adding, in their place, the words ''the Secretary makes a determination''.
■ O. Revising paragraph (r)(2).
■ P. Revising paragraph (r)(3).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c)(1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (c)(8) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(9) of this section.

(iv) For purposes of this paragraph (c)—

(A) A borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary;

(B) References to ''the lender'' mean the guaranty agency if the guaranty agency is the holder of the loan at the time the borrower applies for a total and permanent disability discharge, except that the total and permanent disability discharge claim filing requirements applicable to a lender do not apply to the guaranty agency; and

(C) References to ''the applicable guaranty agency'' mean the guaranty agency that guarantees the loan.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* (i) If the borrower notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of

the definition of that term in § 682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time;

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans, and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b); or

(B) An SSA notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans, that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician certified the borrower's application; or

(B) As of the date the Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician certified the borrower's loan discharge application or received the SSA notice of award for SSDI or SSI benefits to the person who made the payment.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the physician's certification or SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the Secretary's receipt of the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(6)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment, on a form approved by the Secretary; or

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(8) *Lender and guaranty agency actions.* (i) If the Secretary approves the borrower's total and permanent disability discharge application—

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician certified the borrower's loan discharge application or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

(9) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b).* (i) *General.* If a veteran notifies the lender that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the veteran for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(9)(ii)(C) of this section will end after 120 days and the lender will resume collection on the loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The veteran must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(9)(iv) and (c)(9)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans, that the Secretary has received a total and permanent disability discharge application from the veteran. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(9)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the veteran's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the veteran's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(x) After making a determination that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the veteran's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each lender to submit a disability claim to the guaranty agency.

(xi) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) An explanation that the lender will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with procedures described in paragraphs (c)(2) through (c)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(xii)(A) If the Secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs the lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section.

(B) If the claim meets the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim and discharge the loan.

(C) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(D) Upon receipt of the claim payment from the guaranty agency, the lender returns any payments received by the lender on or after the effective date of the determination by the Department of Veterans Affairs to the person who made the payments.

(E) If the Secretary does not approve the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(g) * * *

(2) * * *

(ii) Within 60 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled, in accordance with paragraphs (c)(3)(iii) or (c)(9)(ix) of this section.

* * * * *

(h) * * *

(1) * * *

(v) In the case of a disability claim based on a veteran's discharge application processed in accordance with paragraph (c)(9) of this section, the guaranty agency must review the claim promptly and not later than 45 days after the claim was filed by the lender pay the claim or return the claim to the lender in accordance with paragraph (c)(9)(xi)(B) of this section.

* * * * *

(k) * * *

(2) * * *

(i) The Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or has filed for relief in bankruptcy, in accordance with the procedures in paragraph (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the ''lender'' and ''guaranty agency'' in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the determination that the borrower is eligible for a total and permanent disability discharge, the guaranty agency must promptly return these payments to the sender. At the same time that the agency returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability, unless the loan is reinstated in accordance with paragraph (c) of this section, or the Secretary directs the borrower otherwise.

(3) When the Secretary discharges the loan, the Secretary returns to the sender any payments received by the Secretary on the loan after the date the borrower became totally and permanently disabled.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

■ 9. Section 685.200 is amended by revising paragraph (a)(1)(iv)(A)(*3*).

The revision reads as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

■ 10. Section 685.202 is amended by:

■ A. In paragraph (b)(3), removing the citation ''§ 685.209(d)(3)'' and adding, in its place, the citation ''§ 685.209(b)(3)(iv)''.

■ B. Revising paragraph (b)(4).

The revision reads as follows:

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

* * * * *

(b) * * *

(4) Except as provided in paragraph (b)(3) of this section and in §§ 685.208(l)(5) and 685.209(b)(3)(iv), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative repayment plan or the income-contingent repayment plan described in § 685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

* * * * *

■ 11. Section 685.208 is amended by:

■ A. Revising paragraph (a)(1).

■ B. Revising paragraph (a)(2).

■ C. Revising paragraph (k).

The revisions read as follows:

§ 685.208 Repayment plans.

(a) * * *

(1) *Borrowers who entered repayment before July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section;

(C) The graduated repayment plan in accordance with paragraph (f) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section; or

(C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (g) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section; or

(C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section;

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

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section; or

(D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section.

(v) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income-contingent repayment plans, the income-based repayment plan, or an alternative repayment plan.

* * * * *

(k) *Income-contingent repayment plans.* (1) Under the income-contingent repayment plan described in § 685.209(a), the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) Under the income-contingent repayment plan described in § 685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

(3) For the income-contingent repayment plan described in § 685.209(b), the regulations in effect at the time a borrower enters repayment and selects the income-contingent repayment plan or changes into the income-contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income-contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(4) Provisions governing the income-contingent repayment plans are in § 685.209.

* * * * *

■ 12. Section 685.209 is revised to read as follows:

§ 685.209 Income-contingent repayment plans.

(a) *Pay As You Earn repayment plan:* The Pay As You Earn repayment plan is an income-contingent repayment plan for eligible new borrowers.

(1) *Definitions.* As used in this section—

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income;

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

(iii) *Eligible new borrower* means an individual who—

(A) Has no outstanding balance on a Direct Loan Program Loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B)(*1*) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(*2*) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

(iv) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

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

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

(A) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the Pay As You Earn repayment plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the Pay As You Earn repayment plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

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

(2) *Terms of the Pay As You Earn repayment plan.* (i) A borrower may select the Pay As You Earn repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

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

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

(B) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

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

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

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

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

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

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the Pay As You Earn repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the income-based repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the Pay As You Earn repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

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

(*1*) When a borrower is determined to no longer have a partial financial hardship; or

(*2*) At the time a borrower chooses to leave the Pay As You Earn repayment plan.

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

(*2*) After the amount of accrued interest reaches the limit described in paragraph (a)(2)(iv)(B)(*1*) of this section, interest continues to accrue, but is not capitalized while the borrower remains on the Pay As You Earn repayment plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the Pay As You Earn repayment plan or no longer has a partial financial hardship.

(vi) The repayment period for a borrower under the Pay As You Earn repayment plan may be greater than 10 years.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the Pay As You Earn repayment plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

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

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

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

(4) *Changes in the payment amount.* (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the Pay As You Earn repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making

income-contingent payments. In either case, as a result of the recalculation—

(A) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the Pay As You Earn repayment plan; and

(B) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(ii) A borrower who no longer wishes to repay under the Pay As You Earn repayment plan may change to a different repayment plan in accordance with § 685.210(b).

(5) *Eligibility documentation, verification, and notifications.* (i)(A) The Secretary determines whether a borrower has a partial financial hardship to qualify for the Pay As You Earn repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

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

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

(ii) After making a determination that a borrower has a partial financial hardship to qualify for the Pay As You Earn repayment plan for the year the borrower initially elects the plan and for each subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

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

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (a)(5)(i) of this section, if the borrower chooses to remain on the Pay As You Earn repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and (a)(5)(vii) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (a)(2)(iv) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (a)(5)(iv)(C) of this section.

(vi) If a borrower who is currently repaying under another repayment plan selects the Pay As You Earn repayment plan but does not provide the documentation described in paragraphs (a)(5)(i)(A) or (a)(5)(i)(B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section if a borrower who is currently repaying under the Pay As You Earn repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline—

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

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

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

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

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

(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated Pay As You Earn repayment plan monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

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

(6) *Loan forgiveness.* (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the Pay As You Earn repayment plan and satisfied at least one of the following conditions during that period:

(A) Made reduced monthly payments under a partial financial hardship as provided in paragraph (a)(2)(i) or (a)(2)(ii) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section.

(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-contingent payments as provided in paragraph (a)(4)(i) of this section.

(C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) with a 10-year repayment period.

(D) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the borrower first selected the Pay As You Earn repayment plan.

(E) Made monthly payments under the income-contingent repayment plan described in paragraph (b) of this section or the income-based repayment plan described in § 685.221, including a calculated monthly payment amount of $0.00.

(F) Received an economic hardship deferment on eligible Direct Loans.

(ii) As provided under paragraph (a)(6)(v) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and

(B)(*1*) The borrower made those monthly payments each year for a 20-year period; or

(*2*) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 20 years of payments.

(iii) For a borrower who qualifies for the Pay As You Earn repayment plan, the beginning date for the 20-year period is—

(A) If the borrower made payments under the income-contingent repayment plan described in paragraph (b) of this section or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

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

(*1*) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for the Pay As You Earn repayment plan. The beginning date is the date the borrower made the payment or received the deferment after October 1, 2007;

(*2*) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan after October 1, 2007;

(*3*) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(B)(*1*) or (a)(6)(iii)(B)(*2*) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan;

(*4*) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or

(*5*) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(A) or (a)(6)(iii)(B) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan.

(iv) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 20-year forgiveness period.

(v)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(6) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

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

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

(*3*) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(6) of this section and does not require the borrower to submit a request for loan forgiveness.

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

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

(*2*) Provides the borrower with the information described in paragraph (a)(6)(v)(A)(*3*) of this section; and

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

(b) *Income-contingent repayment plan:* The income-contingent repayment (ICR) plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) *Repayment amount calculation.* (i) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2)(ii) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(ii) The annual amount payable by a borrower under the ICR plan is the lesser of—

(A) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's AGI as shown in the income percentage factor table in a notice published annually by the Secretary in the **Federal Register**; or

(B) 20 percent of discretionary income.

(iii)(A) For purposes of paragraph (b) of this section, discretionary income is defined as a borrower's AGI minus the amount of the poverty guideline, as defined in paragraph (b)(1)(iii)(B) of this section, for the borrower's family size as defined in § 685.209(a)(1)(iv).

(B) For purposes of paragraph (b) of this section, the term ''poverty guideline'' refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty line to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(v) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(vi) If a borrower's monthly payment is calculated to be greater than $0 but less than or equal to $5.00, the amount payable by the borrower is $5.00.

(vii) For purposes of the annual recalculation described in paragraph (b)(1)(v) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the ICR plan.

(viii) For each calendar year, the Secretary publishes in the **Federal Register** a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(ix) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(x) At the beginning of the repayment period under the ICR plan, the borrower must make monthly payments of the amount of interest that accrues on the borrower's Direct Loan until the Secretary calculates the borrower's monthly payment amount on the basis of the borrower's income.

(2) *Treatment of married borrowers.* (i)(A) For a married borrower who files a joint Federal tax return with his or her spouse, the AGI for both spouses is used to calculate the monthly payment amount under the ICR plan.

(B) For a married borrower who files a Federal income tax return separately from his or her spouse, only the borrower's AGI is used to determine the monthly payment amount under the ICR plan.

(ii) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under paragraph (b)(1) of this section.

(iii) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(3) *Other features of the ICR plan.* (i) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(ii) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(iii) *Repayment period.* (A) The maximum repayment period under the ICR plan is 25 years.

(B) The repayment period includes—

(*1*) Periods in which the borrower makes payments under the ICR plan on loans that are not in default;

(*2*) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(1)(i);

(*3*) Periods in which the borrower made monthly payments under the Pay As You Earn repayment plan;

(*4*) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(*5*) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(*6*) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(*7*) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(*8*) Periods of economic hardship deferment after October 1, 2007.

(C) If a borrower repays more than one loan under the ICR plan, a separate repayment period for each loan begins when that loan enters repayment.

(D) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the ICR plan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notification that includes—

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

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

(*3*) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(E) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (b)(3)(iii)(D) of this section and does not require the borrower to submit a request for loan forgiveness. After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

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

(*2*) Provides the information described in paragraph (b)(3)(iii)(D)(*3*) of this section; and

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

(iv) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(v) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the ICR plan, and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the terms and conditions of the plan, including—

(A) The borrower's scheduled monthly payment amount as calculated under paragraph (b)(1) or (b)(3)(vi)(D) of this section, as applicable, and the time period during which this scheduled monthly payment will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (b)(3)(vi)(A) of this section, if the borrower chooses to remain on the ICR plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive the information;

(C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in paragraph (b)(3)(ii) of this section, the borrower may contact the Secretary at any time during the borrower's current annual payment period and obtain the Secretary's determination as to whether an adjustment is appropriate; and

(D) An explanation of the consequences, as described in paragraph (b)(3)(vi)(D) of this section, if the borrower does not provide the required information.

(vi) *Documentation of income and certification of family size.* (A) For the initial year that a borrower selects the ICR plan and for each subsequent year that the borrower remains on the plan, the borrower must—

(*1*) Provide to the Secretary, for purposes of calculating a monthly repayment amount and servicing and collecting the borrower's loan, acceptable documentation, as determined by the Secretary, of the borrower's AGI or alternative documentation of income in accordance with paragraph (b)(3)(i) of this section; and

(*2*) Certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for the year.

(B) For each subsequent year that a borrower remains on the ICR plan, the Secretary notifies the borrower in writing of the requirements described in paragraph (b)(3)(vi)(A) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (b)(3)(vi)(B)(*1*) of this section. The notification provides the borrower with—

(*1*) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive the documentation described in paragraph (b)(3)(vi)(A) of this section (annual deadline); and

(*2*) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (b)(3)(vi)(D) of this section, and the effective date for the recalculated monthly payment amount.

(C) The Secretary designates the standard repayment plan for a borrower who initially selects the ICR plan but does not comply with the requirement in paragraph (b)(3)(vi)(A)(*1*) of this section.

(D) If, during a subsequent year that a borrower remains on the ICR plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section within 10 days of the specified annual deadline, the Secretary recalculates the borrower's required monthly payment amount, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period. The maximum recalculated monthly amount the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's loans that was outstanding at the time the borrower began repayment under the ICR plan. The repayment period based on the recalculated payment may exceed 10 years.

(E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section within 10 days of the specified annual deadline—

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

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

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

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

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

(F)(*1*) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(*1*) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vi)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

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

(G) If a borrower defaults and the Secretary designates the ICR plan for the borrower but the borrower fails to comply with the requirements in paragraph (b)(3)(vi)(A) of this section, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 13. Section 685.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 685.210 Choice of repayment plan.

* * * * *

(b) * * *

(2) * * *

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income-contingent repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in § 685.209(a)(6)(iii), § 685.209(b)(3)(iii), or § 685.221(f)(3), respectively.

* * * * *

§ 685.211 [Amended]

■ 14. Section 685.211(a)(1) is amended by adding the words ''income-contingent repayment plan under § 685.209(a)(3) or the'' immediately before the words ''income-based repayment''.

§ 685.212 [Amended]

■ 15. Section 685.212(g)(2) is amended by removing the words ''the borrower became totally and permanently disabled, as certified under § 685.213(b)'' and adding, in their place, the words ''specified in § 685.213(b)(4)(iii) or 685.213(c)(2)(i), as applicable''.

■ 16. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. If the borrower notifies the Secretary that the borrower claims to be totally and permanent disabled prior to submitting a total and permanent disability discharge application, the Secretary—

(i) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(ii) Suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days; and

(iii) Informs the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(2) *Physician certification or Social Security Administration (SSA) disability notice of award.* The application must contain—

(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b); or

(ii) An SSA notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician certified the borrower's application; or

(B) As of the date the Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the receipt of the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants

a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(8) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary; and

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b).* (1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in § 685.102(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary—

(i) Identifies all title IV loans owed by the veteran and notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower;

(ii) If the application is incomplete, requests the missing information from the veteran and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary's process for reviewing total and permanent disability discharge applications.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied. The notification to the veteran includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) The date that the veteran must resume making payments;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(Approved by the Office of Management and Budget under control number 1845–0065.)

(Authority: 20 U.S.C.1087a *et seq.*)

■ 17. Section 685.220 is amended by revising paragraph (d)(1)(ii)(D) to read as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) In default but agrees to repay the consolidation loan under one of the income-contingent repayment plans described in § 685.208(k) or the income-based repayment plan described in § 685.208(m).

* * * * *

■ 18. Section 685.221 is amended by:

■ A. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively.

■ B. Adding a new paragraph (a)(4).

■ C. In redesignated paragraph (a)(5)(i), removing the words ''exceeds 15 percent'' and adding, in their place, the words ''exceeds 15 percent or, for a new borrower, 10 percent''.

■ D. In redesignated paragraph (a)(5)(ii), removing the words ''exceeds 15 percent'' and adding, in their place, the words ''exceeds 15 percent or, for a new borrower, 10 percent''.

■ E. In paragraph (b)(1), removing the words ''no more than 15 percent'' and adding, in their place, the words ''no more than 15 percent or, for a new borrower, 10 percent''.

■ F. In paragraph (b)(2)(i), removing the words ''the total amount of eligible loans'' and adding, in their place, the words ''the total outstanding principal amount of the borrower's eligible loans''.

■ G. In paragraph (b)(2)(ii)(C), removing the words ''the outstanding principal amount of eligible loans'' and adding, in their place, the words ''the total outstanding principal amount of the borrower's eligible loans''.

■ H. Revising paragraph (b)(3).

■ I. Revising paragraph (c).

■ J. Revising paragraph (d).

■ K. Revising paragraph (e).

■ L. Revising paragraph (f).

The addition and revisions read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

(4) *New borrower* means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

* * * * *

(b) * * *

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

* * * * *

(c) *Payment application and prepayment.* (1) The Secretary applies any payment made under the income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

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

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

(4) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2)(i) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(A) For a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan, the time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(B) For a Direct Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 685.208(j) and the amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(ii) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2)(i) of this section may request a change to a different repayment plan after making one monthly payment under the Direct Loan standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for accepting smaller payments than previously scheduled, in accordance with § 685.205(a).

(e) *Eligibility documentation, verification, and notifications.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i) Provide documentation, acceptable to the Secretary, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income; and

(iii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification provides the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(4) of this section.

(4) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid interest will be capitalized in accordance with paragraph (b)(4) of this section; and

(iii) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (b)(1) of this section and sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(8) If the Secretary receives the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section within 10 days of the specified annual deadline—

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

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

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

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

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

(9)(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

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

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during the applicable loan forgiveness period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (b)(2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(iii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) with a 10-year repayment period.

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Made monthly payments under a Direct Loan income-contingent repayment plan, including a calculated monthly payment amount of $0.00.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(iii) of this section; and

(ii)(A) The borrower made those monthly payments each year for the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the applicable loan forgiveness period is—

(i) If the borrower made payments under the income-contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994; or

(ii) If the borrower did not make payments under the income-contingent repayment plan—

(A) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (f)(3)(ii)(B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements in paragraph (f)(1) of this section; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (f)(3)(ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan.

(4) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the applicable loan forgiveness period.

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

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

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

(C) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(ii) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness.

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

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

(B) Provides the borrower with the information described in paragraph (f)(5)(i)(C) of this section; and

(C) Returns to the sender any payment received on a loan after loan forgiveness has been granted in accordance with paragraph (f)(5)(i) of this section.

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