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Federal Student Aid Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 682 and 685

RIN 1840–AC87

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is amending the Federal Student Aid Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from the Higher Education Reconciliation Act of 2005 (HERA), Pub. L. 109–171, and other recently enacted legislation. These final regulations reflect the provisions of the HERA that affect students, borrowers, postsecondary educational institutions, lenders, and other program participants in the Federal student aid programs authorized under Title IV of the HEA.

Final regulations for the two new Title IV grant programs created by the HERA, the Academic Competitiveness Grant Program and the National Science and Mathematics Access to Retain Talent (SMART) Grant Program, are being published in a separate notice in the **Federal Register**.

DATES: *Effective Date:* These final regulations are effective December 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 219–7048 or via the Internet at: *Gail.McLarnon@ed.gov.*

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SUPPLEMENTARY INFORMATION: On August 9, 2006, the Secretary published in the **Federal Register** interim final regulations with a request for comments (71 FR 45666) for the Federal student financial assistance programs. The interim final regulations were effective on September 8, 2006, and implemented most of the changes made to the HEA by the HERA, enacted as part of the Deficit Reduction Act of 2005 (Pub. L. 109–171). The interim final regulations also implemented changes made to the HEA by: The Taxpayer-Teacher Protection Act of 2004 (Pub. L. 108–409); certain provisions of Pub. L. 107–139; the Pell Grant Hurricane and Disaster Relief Act (Pub. L. 109–66); the Student Grant Hurricane and Disaster Relief Act (Pub. L. 109–67); and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234).

The August 9, 2006, interim final regulations included a request for public comment. This document contains a discussion of the comments we received and revisions to the interim final regulations that we made as a result of these comments.

In the interim final regulations, we stated that changes to the final regulations made after consideration of the public comments would be effective July 1, 2007. After considering the comments we received, we have decided not to make any substantive changes to the regulations. We have made some technical and conforming changes that were identified during the public comment period, but these technical changes are not subject to the delayed effective date under section 482 of the HEA, and therefore become effective 30 days after publication of these final regulations.

Analysis of Comments and Changes

The changes to the interim final regulations included in this document were developed through the analysis of comments received on the interim final regulations published on August 9, 2006. We received 55 comments on the interim final regulations.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments pertaining to issues that were not within the scope of the interim final regulations.

Definition of Telecommunications Course (§ 600.2)

Comments: A commenter representing accrediting agencies believed that the reference to ''regular and substantive interaction'' in the definition of *telecommunications course* was inconsistent with Congress' intent to permit institutions maximum flexibility in the development and application of curriculum, and placed an undue burden on accrediting agencies.

Discussion: The Secretary does not agree. The regulations do not restrict the curricula institutions may offer or the delivery modes they may use. Instead, the regulations reflect the clear distinction in the HERA between telecommunications courses and correspondence courses. This distinction is necessary because the HERA eliminated the circumstances under which telecommunications courses are considered correspondence courses, and excluded telecommunications courses from the ''50 percent rule'' limitations on institutional eligibility for Title IV, HEA program assistance, while retaining them for correspondence courses. Because of the changes made by the HERA, it is necessary to clarify the regulatory definition to distinguish telecommunications courses from correspondence courses. We have defined the term *telecommunications course* to conform to the usage of that term by the higher education community. None of the commenters proposed alternative language.

The revised definition of the term *telecommunications course* does not impose any new requirements on accrediting agencies. Since 1998, section 496(n)(3) of the HEA has required the Secretary to specifically designate whether recognized accrediting agencies have accreditation of distance education within the scope of their recognition. Since 1994, accrediting agencies have also been required under § 602.22(a)(2)(iii) to provide prior approval for an institution's addition of courses or programs that represent a significant departure in the method of delivery from those previously offered. The interim final regulations do not modify these requirements, or add any new ones.

Changes: None.

Comments: While supporting our effort to draw a clear distinction between telecommunications and correspondence courses, one commenter thought that the language in the definition of *telecommunications course* was not specific enough to determine how much interactivity was sufficient. The commenter suggested that the definition be revised to include interaction among students and that we clarify that ''regular'' interaction means ''not trivial'' rather than ''at specific intervals.''

Discussion: The primary purpose of revising the definition of *telecommunications course* was to draw a clear distinction between telecommunications and correspondence courses. In drawing this

distinction, we wanted to avoid as much as possible dictating a particular teaching method. The Secretary believes that requiring interaction among students, as well as between students and the instructor, would preclude certain teaching methods, such as self-paced instruction.

We disagree with the commenter on the meaning of ''regular'' interaction. We believe the phrase ''regular and substantive'' means that the interaction should both take place at regular intervals and not be trivial.

Changes: None.

Comments: Two commenters representing financial aid administrators supported the change in the definition of the term *telecommunications course* but asked whether instruction by video cassette or disc recording would be considered to be telecommunications coursework.

Discussion: We believe that the definition of *telecommunications course* adequately addresses the issue raised in the comments. The regulations provide that instruction by video cassette or disc recording is telecommunications coursework when the course involves the use of other telecommunications technologies for regular and substantive interaction between students and instructor, and when the course is offered onsite in the same award year. Otherwise, the use of video cassettes or disc recording is considered a correspondence course.

Changes: None.

Distance Education (§§ 600.2, 600.7, 600.51, 668.8 and 668.38)

Comments: One commenter agreed that academic programs offered through any use of telecommunications or correspondence by foreign schools should not be eligible for Title IV, HEA program assistance.

A few commenters did not believe that the HERA intended to deny eligibility under the Federal Family Education Loan (FFEL) Program to a student who physically attends a foreign school but takes a portion of his or her program through telecommunications classes. The commenters felt that it is unfair to bar from FFEL eligibility a student who could fulfill a program requirement only through telecommunications coursework because the class is not offered at the foreign school the student attends. One commenter suggested that U.S. military personnel deployed outside of the U.S. may need to take courses via telecommunications instruction as part of their program of study.

The commenters recommended that the definition of an eligible program for a foreign school be modified to permit the inclusion of telecommunications courses. Specifically, the commenters suggested the definition be changed to include a program at a foreign school that requires on-site attendance in traditional classroom or lab settings in at least one class while permitting one or more additional telecommunications classes, while excluding a program at a foreign school that permits the student to attend courses solely via telecommunications instruction.

Alternatively, the commenters suggested that the effective date of the regulations be changed to allow foreign schools to deliver second and subsequent disbursements of pending loans on or after July 1, 2006 if the first disbursement was made prior to July 1, 2006.

Discussion: The final regulations reflect the statutory requirements for an eligible program to include programs offered in whole or in part through telecommunications instruction by institutions in the United States with appropriate accreditation. The statute does not extend this eligibility to foreign schools and the Secretary does not have the authority to do so by regulation.

In response to the comment regarding U.S. military personnel located abroad, it is the Secretary's understanding that such students do not usually attend foreign schools because they have access to programs offered by domestic institutions. Lastly, the effective date is established by the HERA and cannot be changed by regulation.

Changes: None.

Academic Year (§ 668.3)

Comments: One commenter suggested that the Secretary change the definition of an academic year so that institutions can use the same definition as they use for grade level in the Stafford Loan Program.

Discussion: The definition of an academic year in § 668.3 reflects the statutory definition in section 481(a) of the HEA, and the Secretary cannot change that definition.

Changes: None.

Direct Assessment Programs (§ 668.10)

Comments: One commenter agreed that direct assessment programs offered at foreign schools should not be considered eligible for Title IV funding.

Discussion: The Secretary appreciates the commenter's support.

Changes: None.

Comments: One commenter representing several higher education associations, and two commenters representing financial aid administrators, asked how the Department will evaluate satisfactory academic progress for direct assessment programs.

Discussion: Students enrolled in direct assessment programs who are receiving Title IV HEA, program assistance must meet the same satisfactory academic progress requirements as do students attending other types of programs. However, since direct assessment programs may be designed in a variety of ways, we will determine how we will evaluate institutional compliance with satisfactory academic progress standards on a case-by-case basis as part of the initial eligibility review.

Changes: None.

Comments: One commenter thought that § 668.10(a)(3) was intended to require an institution to develop a protocol for equating programs administered under direct assessment rules with clock hours for credit hour measurements, but that the text in the interim final regulations was unclear. The commenter suggested some revised language.

Discussion: The commenter is correct about the intent of the regulations. We agree that the commenter's proposed revised language is clearer than the language in the interim final regulations.

Changes: We have revised § 668.10(a)(3) for clarity, but without changing the meaning.

Treatment of Title IV Funds When a Student Withdraws (§§ 668.22, 668.35, and 668.173)

Post-Withdrawal Disbursement Counseling

Comments: Several commenters questioned why an institution must obtain the student's confirmation to apply loan funds to the student's account, but not to apply other Title IV program funds to that account. Several commenters questioned why an institution must obtain confirmation that a student wishes to receive grant funds as a direct disbursement. Commenters noted that the HERA provision that changed the post-withdrawal disbursement requirements addressed confirmation of receipt of loan funds, but not grant funds.

Discussion: As in the past, § 668.164(d)(1) and (d)(2) require an institution to obtain a student's authorization (or a parent's authorization in the case of a parent PLUS loan) to credit the student's account with any Title IV, HEA funds for charges other than tuition, fees, and room and board if the student contracts with the institution for other services.

An institution may obtain such an authorization from a student or parent at any time. The HERA added a new provision that goes beyond the pre-existing requirements in § 668.164(d)(1) and (d)(2) to require an institution to obtain confirmation from a student (or a parent in the case of a parent PLUS Loan) before making any post-withdrawal disbursement of loan funds. This confirmation cannot be made until the need for the post-withdrawal disbursement has been determined, i.e., after the student withdraws. This change ensures that a student or a parent has an opportunity after the student's withdrawal to decline all or a part of the loan, thus eliminating or reducing his or her loan debt. The Secretary did not add a similar change to the regulations for grant funds because she believes the requirements of § 668.164(d)(1) and (d)(2) are sufficient to control the application of grant funds to a student's account.

The requirement in § 668.164(g)(3)(i) that an institution obtain confirmation that a student wishes to receive a post-withdrawal direct disbursement of grant funds is not new. Students are provided with an opportunity to refuse direct disbursements of grant funds so that they may preserve the amount of their grant eligibility if they return to school within the award year.

Changes: None.

Comments: Several commenters felt that the interim final regulations did not clearly explain how the requirements in § 668.22 are applied in concert with the regulations for making a late disbursement (§ 668.164(g)(3)) and for notifying a student, or parent (for a parent PLUS Loan), to provide that student or parent an opportunity to cancel a loan when the institution credits the student's account with FFEL, Direct Loan, or Perkins Loan program funds (§ 668.165(a)(2)). Many commenters believed a conforming amendment was needed to clarify whether § 668.165(a)(2) applies in the case of a post-withdrawal disbursement.

Discussion: The new confirmation requirements do not apply to late disbursements made to students who did not withdraw. Section 668.164(g)(3)(i) requires an institution to make any post-withdrawal disbursement due to a student who withdraws during a payment period or period of enrollment in accordance with the new post-withdrawal disbursement procedures. However, the new post-withdrawal disbursement requirements do not apply to late disbursements made to students who successfully complete the payment period or period of enrollment (§ 668.164(g)(3)(ii)) or to students who do not withdraw, but cease to be enrolled as at least half-time students (§ 668.164(g)(3)(iii)).

The commenters are correct that a conforming amendment to § 668.165(a)(2) is necessary. For students who withdraw and are due a post-withdrawal disbursement, the new post-withdrawal disbursement procedures in § 668.22 supersede the provisions in § 668.165(a)(2) that require an institution to notify a student or parent of loan funds that are credited to a student's account. Because the new post-withdrawal disbursement procedures require an institution to obtain a student's confirmation (or a parent's confirmation in the case of a parent PLUS Loan), the institution does not have to notify the student or parent again when the institution credits the loan funds to the student's account after it receives the borrower's confirmation. The notification requirement in § 668.165(a)(2) still applies in all other cases when an institution credits loan funds to a student's account.

Changes: The Secretary has revised § 668.165(a)(2) to make it clear that an institution is not required to notify a student or parent of loan funds that are credited to a student's account for students who withdraw and are due a post-withdrawal disbursement.

Comments: Several commenters noted that requiring an institution to provide notification of the outcome of a post-withdrawal disbursement request ''electronically or in writing'' is redundant, because ''in writing'' means through conventional mailing methods or electronically.

Discussion: The commenters are correct.

Changes: The reference to electronic notification has been removed from § 668.22(a)(5)(iii)(E).

Withdrawals From Clock Hour Programs

Comments: One commenter supported the new regulatory provisions governing the Return of Title IV Funds in the case of clock hour programs. One commenter felt that the regulations should allow an institution to determine the percentage of aid earned by a student who withdraws and has completed more clock hours than he or she was scheduled to complete by using the completed hours, rather than the scheduled hours. The commenter noted that this was consistent with the previous policy for students withdrawing from clock-hour programs.

Discussion: Prior to the enactment of the HERA, either completed hours or scheduled hours were used to determine earned aid for a student who withdrew from a clock-hour program. However, the HERA changed the law to allow the use of scheduled hours only.

Changes: None.

Grant Overpayment Requirements

Comments: One commenter suggested that the regulations be modified to clarify that the provision that a student is not required to return an original grant overpayment amount of $50 or less applies on a Title IV, HEA program-by-program basis.

Discussion: The Secretary agrees with the commenter.

Changes: Section 668.22(h)(3)(ii)(B) has been revised to make it clear that the provision that a student is not required to return an original grant overpayment amount of $50 or less applies on a Title IV, HEA program-by-program basis.

Comments: Several commenters asked the Department to raise to $50 the $25 de minimis amount for overpayments in the Academic Competitiveness Grant (ACG) and National SMART grant programs and other Title IV programs to match the de minimis grant overpayment amount for students who withdraw, which was raised to $50 by the HERA.

Discussion: The Secretary does not agree that the amounts should correspond. The $25 de minimis standard used in the regulations is based upon the Department's determination of the amount that is cost effective for the Department to collect on outstanding balances owed to the Department. We are able to successfully pursue collections of $25 or higher with Internal Revenue Service (IRS) offsets and other methods.

Changes: None.

Waiver of Grant Overpayment for Students Affected by a Disaster

Comments: One commenter felt that the regulatory language applying the waiver of grant overpayment for students affected by a disaster to students ''whose withdrawal ended within the award year during which the designation occurred or during the next succeeding award year'' was unclear. The commenter asked the Secretary to clarify that students remain eligible for the grant overpayment waiver even if they do not return to the same institution in the following year.

Discussion: An otherwise eligible student qualifies for the waiver if he or she withdraws during the award year during which the major disaster designation occurred or during the next succeeding award year, if the student withdrew because of the major disaster.

Changes: Section 668.22(h)(5)(iii) has been revised to clarify that the grant

overpayment waiver applies to students whose withdrawal due to a disaster occurred, rather than ended, within the award year during which the designation occurred or during the next succeeding award year.

Order of Return of Grant Funds

Comments: One commenter felt that the regulations should be changed to make it clear that an institution will not have to return funds to both the ACG and National SMART Grant programs for the same withdrawal.

Discussion: Because an institution may opt to use the period of enrollment, rather than the payment period, to perform a Return of Title IV Funds calculation for a student who withdraws from a non-standard term or non-term program, it is possible, although highly unlikely, that both an ACG and a National SMART Grant could be disbursed (or scheduled to be disbursed) to a student for the same period. In such a case, funds from both the ACG and National SMART Grant programs may need to be returned for the same withdrawal.

Changes: None.

Return of Funds Within 45 Days

Comments: One commenter felt that the Secretary should extend the other deadlines under § 668.22 from 30 days to 45 days to correspond to the extension of the maximum amount of time an institution has to return unearned funds for which it is responsible. The commenter felt this extension should also be applied to notifications to students for post-withdrawal disbursements and notifications to students of Title IV grant overpayments resulting from withdrawal. The commenter asserted that a uniform deadline makes sense because the same Return of Title IV Funds process leads up to all three requirements, and consistency would help ensure compliance.

Discussion: Institutions have previously indicated that they needed an extension of the former 30-day return deadline to provide additional time to perform the administrative functions necessary to return the funds. The actual calculation of earned funds is not time consuming. The Secretary believes that providing institutions with over four weeks to enter information from their records and calculate the amount to be returned is more than sufficient.

With regard to the request that the Secretary extend the 30-day deadlines for notifications to students, the Secretary does not believe it is in the best interest of students to extend these deadlines merely for consistency's sake. The Secretary believes that the sooner an institution attempts to contact these students, the more likely it is that the institution will reach the students.

Changes: None.

Student Debts Under the HEA and to the U.S. (§ 668.35)

Comments: Several commenters suggested that § 668.35(e)(3), which governs the amount of an overpayment that renders a student ineligible for additional Title IV, HEA program assistance, be changed from $25 to $50 to be consistent with the new statutory requirement governing repayment of grant funds under the return of Title IV aid provisions.

Discussion: The Secretary disagrees with the commenters. In 2002, we published final regulations to make the treatment of overpayments consistent in the Title IV, HEA programs, including incorporating the de minimis amount concept that applied to grant overpayments under the return to Title IV aid requirements. We decided to use the $25 de minimis standard for consistency and simplicity, and because it is cost effective. We do not believe it is appropriate to raise the de minimis amount applicable to overpayments when the Department has the tools and resources available to collect these amounts.

However, as a result of the change in the minimum amount of a grant repayment for which a student is responsible under the return of Title IV aid provisions from $25 to $50, we are amending § 668.35(e) to clarify that a student who owes a grant overpayment of $50 or less that is not a remaining balance and is a result of the return of Title IV aid calculation is eligible to receive additional Title IV, HEA program assistance.

Changes: We have added a new paragraph (4) to § 668.35(e) to clarify that a student who owes a grant overpayment of $50 or less under the circumstances explained above is eligible to receive additional Title IV, HEA program assistance.

Estimated Financial Assistance (§§ 673.5, 682.200, and 685.102)

Comments: One commenter suggested that we add benefits paid under Section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program) that is currently in the definition of *estimated financial assistance* in §§ 682.200(b) and 685.102(b) to the definition of *estimated financial assistance* in § 673.5(c). The commenter also suggested that we add language in § 682.200(b)(1)(iv), which includes in the definition of *estimated financial assistance* benefits paid under the Veteran's Affairs Educational Assistance Pilot Program and language from § 685.102(b)(2)(ii), which excludes from estimated financial assistance the amounts of Federal Perkins Loan and Federal Work-Study funds that the student has declined.

Another commenter requested that the definition of *estimated financial assistance* in all three sections be modified to exclude any alternative or private loans not certified by the institution. This commenter suggested that only those loans that the institution is aware the student is receiving should be included in the definition of *estimated financial assistance*. An additional, similar comment was received suggesting that language be added to the definitions in all three sections to specifically state that only benefits that an institution is aware of must be considered estimated financial assistance.

Discussion: Although the list of individual veterans' education benefits in each of the three sections that define *estimated financial assistance* is not all inclusive, the Secretary agrees with the first commenter that, for consistency, benefits paid under section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program) should be included in § 673.5(c). However, it would be redundant to specifically exclude from the definition of *estimated financial assistance* in § 673.5(c) the amounts of Federal Perkins Loan and Federal Work-Study funds that the student has declined. Section § 673.5 defines the term *estimated financial assistance* for the purpose of determining eligibility for campus-based funds. It would not make sense to exclude campus-based funds declined by a student from the list of items used to determine that student's eligibility for those campus-based funds. If a student declines funds from a campus-based program, the amount of those declined funds would not be used to determine eligibility for campus-based funds.

With respect to the proposal to define *estimated financial assistance* as including only loans of which the institution is aware, we note that, under the administrative capability guidelines in § 668.16(b) and (f), an institution must have a mechanism in place for obtaining and reviewing all information it receives that has a bearing on a student's eligibility for Title IV, HEA assistance. The institution must communicate this information to the individual designated to administer the Title IV programs at the institution. In light of this requirement, we believe that it is unlikely that a student will be

receiving loans of which the institution is not aware.

Changes: The definition of *estimated financial assistance* in § 673.5(c)(1)(ix) has been revised to include benefits paid under section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program). A technical change has also been made to correct the reference in § 685.102(b)(1)(ix) from ''paragraph (2)(iii)'' to ''paragraph (2)(iv)''.

Military Deferment (§§ 674.34, 682.210(t), 682.211(i) and 685.204)

Comments: One commenter recommended that we extend eligibility for the new military deferment established by the HERA to Perkins Loans disbursed before July 1, 2001 if the borrower received at least one Perkins Loan first disbursed on or after July 1, 2001.

Discussion: Section 8007(f) of the HERA specifies that the military deferment applies to loans ''for which the first disbursement is made on or after July 1, 2001.'' The Secretary does not have the authority to extend eligibility for the military deferment to loans for which the first disbursement was made before July 1, 2001.

Changes: None.

Comments: Some commenters asked if a qualified borrower who experiences multiple deployments could receive separate deferments for each of his or her eligible Perkins, FFEL and Direct Loan program loans, as long as each deferment period did not last longer than the three-year maximum.

Discussion: The three-year maximum for the military deferment applies to each loan, not to the borrower. If a borrower receives a military deferment on a loan for three years, or receives multiple military deferments on a loan that add up to three years, that loan no longer qualifies for a military deferment. If the borrower goes back to school, obtains more Title IV loans, and then is called back to active duty, the new loans would qualify for up to three years of military deferment. However, the older loan that has already been in a military deferment for the three-year maximum would not qualify for a military deferment.

Changes: None.

Comments: Several commenters recommended that we confirm that a lender has the authority to grant a mandatory administrative forbearance, as provided for in § 682.211(i), on a borrower's pre-July 1, 2001 loans, if the borrower qualifies for a military deferment on loans that were first disbursed on or after July 1, 2001.

Discussion: FFEL lenders are required to grant mandatory administrative forbearances when notified by the Secretary that exceptional circumstances exist, such as a local or national emergency or a military mobilization. Some borrowers may qualify for a military deferment on loans first disbursed on or after July 1, 2001 and also may qualify for a mandatory administrative forbearance on loans first disbursed before July 1, 2001. However, not all borrowers who qualify for a military deferment necessarily qualify for a mandatory administrative forbearance.

Changes: None.

Comments: Several commenters recommended that we change the name of the prior military deferment that is available to borrowers with loans made before July 1, 1993, to the ''Armed Forces deferment'', to avoid confusion with the new military deferment enacted by the HERA.

Discussion: The FFEL and Direct Loan Public Service Deferment Request forms do not use the term ''military deferment'' to refer to the pre-July 1, 1993 military deferment mentioned in the comments. Instead, these forms refer to borrowers who are ''on active duty in the Armed Forces of the United States.'' These forms are the primary source of information to borrowers on the prior military deferment. Accordingly, we do not believe that there will be any significant confusion among borrowers. Moreover, we believe that re-naming the old military deferment in the regulations serves no purpose.

Changes: None.

Perkins Loan Rehabilitation (§ 674.39)

Comments: One commenter questioned the statutory basis for denying a borrower who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining the Perkins Loan the opportunity to rehabilitate the defaulted Perkins Loan. The commenter questioned the statutory basis for denying loan rehabilitation to such borrowers. The commenter also contended that institutions have no reasonable way of knowing whether a borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining a Perkins Loan.

Discussion: Section 8021(a) of the HERA provides that a student who has been convicted of, or has pled nolo contendere or guilty to a crime involving fraud in obtaining Title IV, HEA program assistance is not eligible for additional Title IV assistance unless he or she has repaid the fraudulently obtained Title IV aid. If a borrower were permitted to rehabilitate a fraudulently obtained Perkins Loan under § 674.39 of the Perkins Loan program regulations, the borrower would regain eligibility for additional Title IV, HEA program assistance without having repaid the fraudulently obtained loan in full, as required by the HERA.

We do not agree with the commenter's contention that an institution will not know if a borrower was found guilty of fraud. The institution would almost certainly be involved in any legal proceedings relating to a Perkins Loan that was fraudulently obtained from that institution.

Changes: None.

Definition of Satisfactory Repayment Arrangement (§§ 682.200 and 685.102)

Comments: Several commenters pointed out that the standard for an on-time payment for purposes of rehabilitating a loan is now different from the standard for an on-time payment for purposes of making satisfactory repayment arrangements on a defaulted loan to regain Title IV, HEA program assistance eligibility. Under the rehabilitation rules, an on-time payment is a payment made within 20 days of the due date. Under the satisfactory repayment arrangement rules, an on-time payment is a payment made within 15 days of the due date. Since some borrowers make satisfactory repayment arrangements and attempt loan rehabilitation concurrently, the commenters recommended using within 20 days of the due date as the on-time standard for both purposes.

Discussion: The making of six consecutive monthly payments under satisfactory repayment arrangements restores Title IV, HEA program assistance eligibility to a defaulted borrower. We believe that the standard for on-time payments for purposes of regaining eligibility for Title IV, HEA program assistance should be stricter than the standard for rehabilitation of a defaulted loan. In addition, the on-time payment standard for borrowers who are in a regular repayment status requires that the payments be made within 15 days of the due date. We do not believe that it is appropriate to provide a longer period for on-time payments for borrowers who are in default on their loans than for borrowers who are current on their loans. Borrowers in default should be held to an on-time standard that is at least as strict as the standard applied to current borrowers, not rewarded with extra time to make a payment. Finally, we note that Congress did not apply the 20-day standard adopted for the loan rehabilitation program to borrowers in other situations.

Changes: None.

Eligible Borrower (§§ 682.201 and 685.200)

Comments: Two commenters recommended adding language to §§ 682.201 and 685.200 to provide that a student borrower is not eligible for Title IV, HEA program assistance unless the borrower has repaid any Title IV, HEA program assistance obtained by fraud, if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining Title IV, HEA program assistance. These commenters also recommended that we revise § 682.201 to list the general eligibility requirements for all borrowers, and then the requirements that are specific to each loan type. The commenters felt that this approach would be more efficient and eliminate unnecessary redundancies.

Discussion: The interim final regulations in §§ 668.32(m) and 668.35(i) include the new eligibility provision that prohibits a student borrower from obtaining Title IV, HEA program assistance unless the borrower has repaid any Title IV, HEA program assistance obtained by fraud. Section 682.201(a) and (b) of the FFEL regulations stipulate that a Stafford Loan borrower and a student PLUS borrower, respectively, must meet the eligibility requirements in 34 CFR part 668 to qualify for a Stafford Loan. Similar references to the eligibility requirements in 34 CFR part 668 are in § 685.200(a)(1)(ii) and 685.200(b)(1)(ii) of the Direct Loan regulations. We believe that it would be redundant to include the language regarding the student eligibility requirements already outlined in part 668 in §§ 682.201 and 685.200.

We disagree with the suggestion that restructuring § 682.201 would be more efficient. In developing the interim final regulations, we determined that the most efficient and easily understandable way to incorporate the changes mandated by the HERA into § 682.201 was to fit the changes into the existing structure of this section. We believe that it is easier to identify changes that we have made to a section if the overall structure of the section remains consistent with past versions of that section. Although some redundancy is unavoidable with this approach, we have reduced the redundancies through the use of cross-references.

Changes: None.

Comments: Several commenters noted that a student borrower may receive a Federal Direct Subsidized Stafford/Ford Loan or a Federal Direct Unsubsidized Stafford/Ford Loan and a FFEL Program Student PLUS Loan for the same period of enrollment. These commenters recommended revising the PLUS loan student eligibility requirements in both the FFEL and Direct Loan programs, to stipulate that a graduate or professional student's annual loan maximum eligibility for either a FFEL Stafford Loan or a Direct Stafford/Ford Loan, as applicable, must be determined before awarding the student a PLUS Loan.

Discussion: The Secretary has previously issued guidance stating that a graduate or professional student's maximum annual Stafford Loan eligibility must be determined before the student applies for a PLUS Loan, although the student is not first required to borrower up to his or her maximum annual Stafford Loan limit before receiving a PLUS Loan. If a school participates in both the FFEL and Direct Loan programs, the school must determine the borrower's maximum annual Stafford Loan eligibility under the program the school is participating in for Stafford Loan purposes. We agree that this guidance should be incorporated in the regulations.

Changes: We have revised §§ 682.201(b)(3) and 685.200(b)(1)(iv) to specify that a graduate or professional student's maximum annual Stafford Loan eligibility under either the Direct Loan or FFEL program must be determined before the student applies for a PLUS Loan.

Comments: Two commenters recommended that § 682.201(d)(1) be revised to stipulate that a borrower who obtained a loan by identity theft or some other illegitimate means, or who obtained a loan for which he or she was ineligible, may not consolidate that loan. In addition, these commenters recommended that these borrowers not be permitted to consolidate loans for which the borrower is eligible until the loans for which the borrower was ineligible have been paid in full. Several commenters noted that new § 682.201(d)(2) states that a borrower may not consolidate a loan for which the borrower is wholly or partially responsible. Because our revision stipulating that a borrower who obtained a loan by identity theft or some other illegitimate means, or who obtained a loan for which he or she was ineligible, may not consolidate that loan was unclear, several commenters asked if the word ''not'' was inadvertently dropped from this section.

Discussion: Section 682.201(d)(2) of the interim final regulations should have read, ''A borrower may not consolidate a loan under this section for which the borrower is wholly or partially ineligible.'' This language mirrors the existing provisions in § 685.211(e)(4) of the Direct Loan regulations. The revised § 682.201(d)(2) precludes a borrower who obtained a Title IV loan by identity theft, fraud, or some other illegitimate means from consolidating the ineligible loan. However, we do not believe that the HERA prohibits a borrower who has obtained loans for which the borrower is ineligible from consolidating loans for which the borrower is eligible, and we do not believe we have the authority to impose such a restriction by regulation. We believe the revision to § 682.201(d)(2) adequately addresses commenters' concerns and that revising § 682.201(d)(1) is unnecessary.

Changes: We have replaced ''responsible'' with ''ineligible'' in § 682.201(d)(2).

Eligibility for a Direct Consolidation Loan (§§ 682.201, 685.100 and 685.220)

Comments: Two commenters recommended that we amend the FFEL and Direct Loan program regulations to clarify that, in the case of a borrower who wishes to consolidate a Federal Consolidation Loan that has been submitted for default aversion into the Direct Loan Program, the borrower must be delinquent or in default on the Federal Consolidation Loan at the time the borrower applies for the Direct Consolidation Loan. The commenters believed that the current regulatory language would allow a borrower to consolidate a Federal Consolidation Loan on which the borrower is current on making payments into a Direct Consolidation Loan, if the Federal Consolidation Loan had been submitted for default aversion at some time in the past.

Discussion: We agree that Federal Consolidation Loans that are currently delinquent or in default may be consolidated into a Direct Consolidation Loan. However, we do not believe that it is necessary to amend the current regulatory language in §§ 682.201, 685.100 and 685.220 to state this requirement more explicitly.

Changes: None.

Comments: Several commenters urged the Secretary to clarify that borrowers with defaulted Federal Consolidation Loans are eligible to consolidate into the Direct Loan Program, without including another eligible loan, for the purpose of obtaining an income contingent repayment (ICR) plan. Section 428C(a)(3)(B)(i)(IV) of the HEA provides this option for borrowers with delinquent Federal Consolidation Loans that have been submitted to the guaranty agency for default aversion. The commenters believed that this

provision of the law, which was added by the HERA, was intended to provide the ICR option to borrowers who are either seriously delinquent or in default on their Federal Consolidation Loans. They also noted that the statutory language does not distinguish between non-defaulted and defaulted borrowers, and that any default claim filing would have been preceded by a default aversion submission.

Discussion: The commenters are correct in reading the regulations implementing the changes made to section 428C(a)(3)(B)(i)(IV) of the HEA to allow a borrower to consolidate a single defaulted Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an ICR plan. We believe that the regulatory language is sufficiently clear and that it is not necessary to revise the regulations to state this more explicitly.

An otherwise eligible borrower may also consolidate a single Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan if the borrower has filed an adversary complaint in a bankruptcy proceeding seeking to have the Federal Consolidation Loan discharged, regardless of whether that Federal Consolidation Loan is current, delinquent, or in default. A borrower who is seeking to have a Federal Consolidation Loan discharged in bankruptcy should be treated the same as a borrower whose loan has been submitted for default aversion. A borrower who seeks to have a loan discharged in bankruptcy is clearly stating his or her intent not to repay the loan, but the bankruptcy filing precludes the submission of a default aversion request. Offering the Direct Loan Program ICR option to such a borrower provides an alternative to having the loan discharged in bankruptcy.

Changes: None.

Permissible Charges by Lenders to Borrowers (§ 682.202(a))

Commments: One commenter urged the Department to develop and publish regulations to restrict a lender's ability to charge an FFEL Program borrower an interest rate that is less than the rate specified in the HEA and the program regulations. The commenter believes that the regulations should require lenders to charge all borrowers the same rate to stop lenders from using interest rates to discriminate between institutions and borrowers based on inequitable criteria or to eliminate competition in the student lending market.

Discussion: Section 427A(l) of the HEA provides that nothing shall prohibit a lender from charging a borrower an interest rate less than the rate specified in the statute. Accordingly, we do not have the statutory authority to require lenders to charge all borrowers the same interest rate.

Changes: None.

Insurance Premium and Federal Default Fees (§§ 682.202(d)(2) and 682.401(b)(10))

Comments: One commenter stated that the changes made to §§ 682.202(d)(2) and 682.401(b)(10) in the interim final regulations appear to eliminate the authority of a lender or guaranty agency, under § 682.209(f)(4), to charge a guarantee fee to a borrower who is refinancing a fixed rate PLUS Loan or a Supplemental Loans for Students (SLS) Loan made prior to July 1, 1987 under § 682.209(f)(1). The commenter believes that the HERA provisions that changed the optional insurance premium to a mandatory Federal default fee did not remove a lender's or guaranty agency's authority to charge a guarantee fee in these cases.

Discussion: We agree that the HERA did not remove a lender's or guaranty agency's authority to charge a guarantee fee if a borrower refinances a fixed rate PLUS or SLS loan made prior to July 1, 1987. However, we believe the existing language in § 682.209(f)(4), which specifically states that the refinancing lender may charge the borrower a guarantee fee in these circumstances, already addresses this issue.

Changes: None.

Loan Disbursement Through an Escrow Agent (§§ 682.207(b)(1)(iv) and 682.408(c))

Comments: Many commenters noted that the discussion in the preamble of the interim final regulations related to the new 10-day deadline for a lender to pay funds to an escrow agent for disbursement to a school differed from the regulatory language and requested clarification. The commenters indicated that the preamble stated that the transfer of loan funds must take place no earlier than 10 days prior to disbursement to the borrower, while the regulations indicated that the 10 days referred to the transfer of the loan funds to the school prior to the school's delivery of the funds to the borrower. A couple of commenters indicated that an additional change was needed to § 682.408(c)(2) to reflect the reduction from 21 to 10 days for disbursement through an escrow agent. Several commenters also recommended that § 682.408(c) be revised to provide that an escrow agent, as the lender's agent, could disburse loan funds directly to a borrower in a study-abroad program at the borrower's request.

Discussion: We agree with the commenters that there is a difference between the discussions of the 10-day period in the preamble and in the interim final regulations. The language in the interim final regulations that states that the escrow agent shall transmit loan proceeds received from a lender to a school not later than 10 days after the agent receives the funds from the lender accurately reflects our policy on this issue.

A revision to § 682.408(c)(2) reflecting the reduction from 21 to 10 days for disbursement through an escrow agent is unnecessary. Paragraph (c)(2) of § 682.408 was incorporated into new § 682.408(c) in the interim final regulations and the reduction from 21 to 10 days for disbursement through an escrow agent is reflected in this new paragraph.

We agree with the commenters who recommended that § 682.408(c) be revised to provide that an escrow agent, as the lender's agent, could disburse loan funds directly to a borrower in a study-abroad program at the borrower's request.

Changes: We have amended § 682.408(c) to clarify that an escrow agent may disburse Stafford Loan proceeds directly to a borrower who is attending a study-abroad program and who requests a direct disbursement from the lender.

Due Diligence in Disbursing a Loan (§§ 682.207 and 682.604)

Comments: Several commenters disagreed with our determination that PLUS Loan funds cannot be disbursed directly to a borrower enrolled in a study-abroad program or at a foreign school. The commenters believed that the ''same terms and conditions'' provision in section 428B(a)(2) of the HEA permits retention of the prior policy allowing direct disbursement of PLUS Loan funds. The commenters noted that, while the PLUS funds check must still be made co-payable to the institution and the borrower under 428B(c)(2) of the HEA, disbursing funds directly to a borrower to be endorsed and mailed to an institution may assist borrowers in paying for expenses while traveling to a foreign school.

Discussion: Section 428B(a)(2) of the HEA does not authorize the Secretary to establish disbursement rules for PLUS Loans made to pay for attendance at foreign institutions or for students enrolled in study-abroad programs that

are different from the rules for other FFEL Loans for attendance at those institutions.

Changes: None.

Comments: One commenter suggested that the regulations in § 682.207(b)(1)(v)(C)(*1*) be revised to clarify that a lender or guaranty agency must verify a student's enrollment with the home institution, rather than with the foreign school, before making a direct disbursement to a student in a study-abroad program.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.207(b)(1)(v)(C)(*1*) has been revised to clarify that a lender or guaranty agency may make a disbursement directly to a student enrolled in a study-abroad program only after verification of the student's enrollment with the home institution.

Comments: One commenter did not agree that a lender or guaranty agency should be required to verify that a continuing student is still enrolled at the enrollment status for which the loan was certified before making a disbursement of Stafford Loan funds directly to a student at a foreign school. The commenter noted that, although the preamble stated that the verification requirements in the regulations are based on those in Dear Colleague Letter (DCL) G–03–348, this requirement differs from that in the DCL, which simply required verification that the student was accepted for enrollment at the foreign school. The commenter felt that the institution should be responsible for notifying the lender if the borrower's enrollment status changed to less than half-time.

A couple of commenters did not believe that the regulations should limit how a lender or guaranty agency may contact a foreign school or home institution to verify enrollment. The commenters felt that other forms of contact, in addition to contact by telephone or e-mail, such as facsimile, should be acceptable.

One commenter was concerned that the regulations do not specify who at a foreign school may authorize a disbursement to be sent directly to a borrower. The commenter felt that this gap left the process open to abuse.

Discussion: The intent of the statutory requirement is to require a confirmation that a student who is attending or plans to attend a foreign school is actually eligible to receive FFEL funds when those funds will not be sent to the school, but will be disbursed directly to a student. Therefore, we believe it is appropriate to require a lender or guaranty agency to confirm that a continuing student's enrollment (at least half-time) supports eligibility for the loan disbursement. As the commenter noted, a change in enrollment status would affect a student's eligibility for a loan only if the student has dropped below half-time enrollment. Therefore, the lender or guaranty agency need only confirm that the student is still enrolled at least half-time.

Because of concerns with timeliness and security, the Secretary does not believe that all forms of contact are appropriate for the verification of enrollment. However, the Secretary does agree that contact by facsimile is acceptable.

The Secretary agrees that not just any individual at a foreign school should be permitted to authorize a disbursement directly to a student. In DCL GEN–06–11, the Department asked foreign schools to use the modified institutional eligibility electronic application (EAPP) to enter the names of the individuals who are authorized by the school to certify FFEL Loan applications. The DCL noted that the Department expects guaranty agencies or lenders to contact these individuals, whose names will be accessible in the Department's Postsecondary Education Participants Systems (PEPS), to verify enrollment. To the extent that a foreign school notifies a guaranty agency or lender of other individuals who are authorized to provide this information, the guaranty agency or lender must verify the information with at least one of the persons entered by the school on the EAPP that those officials are authorized to act on behalf of the institution in administering the FFEL Program. To allow the Secretary the flexibility to change this process in response to possible systems changes, the Secretary does not believe that the procedures for this contact should be specified in the regulations. However, the Secretary has decided that the regulations should require guaranty agencies and lenders to contact foreign schools in accordance with any procedures specified by the Department.

Changes: Section 682.207(b)(2)(i) has been revised to permit a lender or guaranty agency to contact a foreign school via facsimile to verify a student's enrollment. In addition, § 682.207(b)(2)(i)(A) has been changed to require guaranty agencies and lenders to contact foreign schools in accordance with any procedures specified by the Secretary.

Parental Leave and Working Mother Deferments (§§ 682.210(o) and (r) and 685.204(d)(2))

Comments: Many commenters asked whether the deletion of section 428(b)(7)(A)(ii) from the HEA by the HERA effectively eliminated the parental leave and working mother deferments for borrowers with loans disbursed before July 1, 1993. The commenters are concerned that these deferments will not be available to an otherwise eligible borrower because the borrower must waive up to one month of the borrower's grace period in order to meet the eligibility criteria for the deferment.

Discussion: The requirement that a borrower waive at least one month of the grace period so the borrower may be certified as having been enrolled at least half time within the six-month period preceding the deferment start date in § 682.210(o) applies only to the parental leave deferment. Deferments are a term and condition of the borrower's promissory note. The Congress, in making changes to the HEA historically, has not eliminated deferments already granted to a borrower as a term and condition of the borrower's loan, and it does not appear that Congress intended to do so in this case. Accordingly, otherwise eligible borrowers may continue to waive a month of the grace period, if necessary, in order to qualify for the parental leave deferment.

Changes: None.

Forbearance (§ 682.211)

Comments: Several commenters suggested that we eliminate § 682.211(h)(3) of the FFEL regulations because section 8014(e) of the HERA amended the HEA to remove the requirement that the terms of a mandatory forbearance be in writing.

Discussion: While we agree that the HERA eliminated the requirement that the terms of a mandatory forbearance agreement be in writing, we also note that the HERA requires that the terms of a mandatory forbearance agreed to by the lender and the borrower or endorser be documented by a confirmation notice sent by the lender to the borrower/endorser and by the lender recording the terms in the borrower's file. We believe that, with the exception of administrative forbearances in § 682.211(f), the same procedures should apply to all the forbearances. The interim final regulations amended § 682.211(b)(1) to reflect the new forbearance requirements. We believe that § 682.211(h)(3) should also be changed to reflect the new requirements that the lender send a notice to the

borrower/endorser and include a notation in the borrower's file confirming the forbearance rather than simply eliminating the requirement for a written forbearance agreement.

Changes: We have amended § 682.211(h)(3) to reflect these changes.

Teacher Loan Forgiveness (§§ 682.215(c) and 685.217(c))

Comments: One commenter noted that the use of the word ''either'' with regard to a borrower qualifying for teacher loan forgiveness based on teaching special education in ''either an eligible elementary or secondary school'' could be misinterpreted. The commenter recommended removing the word ''either'' to make it clear that a borrower could combine teaching service in an eligible elementary school and an eligible secondary school to qualify for teacher loan forgiveness as a highly qualified special education teacher.

Discussion: Use of the word ''either'' was not intended to imply that service as a highly qualified special education teacher in an eligible elementary school and service as a highly qualified special education teacher in an eligible secondary school could not be combined to qualify a borrower for teacher loan forgiveness.

Changes: We have removed the word ''either'' from §§ 682.215(c)(3)(ii)(B), 682.215(c)(4)(ii)(B), 685.217(c)(3)(ii)(B), and 685.217(c)(4)(ii)(B).

Payment of Special Allowance on FFEL Loans (§ 682.302)

Comments: One commenter asked us to clarify the effective date for the change made by the HERA to the calculation of special allowance payments for PLUS Loans.

Discussion: As reflected in the interim final regulations, PLUS Loans made after January 1, 2000 are no longer subject to the minimum 9 percent trigger for special allowance payments. In accordance with the effective date for the provision of the HERA that made this change, lenders will be paid special allowance on these loans for activity beginning April 1, 2006, which will be reflected on billing reports submitted to the Department after June 30, 2006.

Changes: None.

Comments: Some commenters, particularly from the FFEL industry, claimed that the regulations are impermissibly retroactive. In particular, these commenters claimed that the interim final regulations improperly applied the statutory changes made by the Taxpayer-Teacher Protection Act of 2004 (TTPA), and the HERA, to periods before those statutes became effective. The commenters pointed to the explanation of certain terms in § 682.302(f) as an example of the changes that they felt were being improperly applied retroactively.

Discussion: The changes made to § 682.302 are not retroactive. Prior to the publication of the August 9 interim final regulations, the regulatory provisions in § 682.302 had not been updated since 1994, except for a change to reflect the 1993 statutory amendment that eliminated the 9.5 percent minimum special allowance payment (SAP) rate on loans acquired with funds from a tax-exempt obligation originally issued on or after October 1, 1993. Thus, the prior regulations did not reflect guidance issued by the Department since 1993 to interpret the HEA and the regulations (DCL L–93–161 (November 1993), L–93–163 (December 1993), and L–96–186 (March 1996), FP–05–01 and FP–06–01) or the changes made to those requirements by the TTPA or HERA.

The regulations must reflect the rules for the special allowance eligibility of both loans for which SAP at the 9.5 percent minimum rate is now claimed and loans on which this rate may be claimed in the future. The TTPA placed significant restrictions on the eligibility of new loans for the 9.5 percent SAP, and the HERA significantly restricted whether additional loans could acquire eligibility. However, the eligibility of the great majority of loans on which a 9.5 percent SAP is now and will be claimed depends on, or may be affected by, transactions such as various refinancing transactions that occurred prior to the effective date of either the TTPA or HERA. The prior regulations did not state the consequences of some of those transactions, even though those consequences had been well settled, under the Department's interpretations of the law in effect when the transactions occurred. To clarify the requirements for 9.5 percent SAP eligibility, the interim final regulations first incorporate these interpretations, and then address changes made by the TTPA to the continued eligibility of these loans for 9.5 percent SAP, and by the HERA as to whether loans may acquire that eligibility.

The interim final regulations include in § 682.302(f) an explanation of certain terms (refinance and originally issued) that reflects Departmental interpretations and usage of those terms historically. Based on that usage, it is reasonable to conclude that the terms are already generally understood as explained in the regulations.

The interim final regulations, as published on August 9, 2006, do no more than provide loan holders (and other interested parties) an orderly statement of the requirements for acquiring and continued eligibility for 9.5 percent SAP for all cohorts of loans, both as in effect before the 2004 and 2006 amendments to the HEA, and under the 2004 and 2006 amendments to the HEA. The interim final regulations did not create or change the terms, conditions, and requirements for the eligibility for the 9.5 percent SAP from those which already existed under applicable law. To the extent that loan holders were in compliance with the requirements of: (1) The then-current regulations; (2) applicable prior Department interpretations of those regulations and the HEA; and (3) changes made by the TTPA and by the HERA, the billing status of loans was not changed with the publication of the interim final regulations.

Changes: None.

Comment: Several commenters claimed that § 682.302(e)(2) and (3) improperly requires that a loan acquired with pre-October 1, 1993 tax-exempt funding be ''financed continuously'' by tax-exempt financing to retain eligibility for SAP at the 9.5 percent minimum rate. Some believed that the interpretations on which the Department relied in adopting the interim final regulations had not been communicated to the public, or that the regulations went beyond merely updating existing regulations to reflect longstanding policy. Another commenter questioned whether the ''debt'' to which § 682.302(e)(2)(i)(B) refers to as having been ''refinanced'' is a student loan or a bond.

Discussion: The term ''financed continuously'', to which the comments refer, appears only in § 682.302(e)(2). Section 682.302(e)(2) describes the special allowance rate applicable to any loan acquired with funds from a source that makes the loan eligible for a SAP at the 9.5 percent minimum rate that has been refinanced. All loans that are initially eligible for a 9.5 percent SAP and have been refinanced can be divided into two mutually exclusive groups. The first group includes only those loans that have been refinanced exclusively and continuously from tax-exempt sources. The second group includes all loans not in the first group. The phrase ''financed continuously'' is used to describe the first group, not to exclude the second group from potential eligibility for SAP at the 9.5 percent minimum rate. The interim final regulations contained no provisions that limit continued eligibility for SAP at the 9.5 percent minimum rate only to loans in the first group—those loans continuously refinanced from tax-

exempt sources. Some loans in the second group also retain that eligibility after refinancing. The regulations add no condition on 9.5 percent SAP eligibility that was not already contained in the statute or regulations.

The regulations accurately reflect Department interpretations of applicable law that establish which SAP rate applied to loans refinanced using tax-exempt sources. The Department has had numerous discussions with program participants who have cited these interpretations and it is clear that the loan industry has been aware of the Department's interpretation of these terms. The regulations in § 682.302(e)(2)(i)(A) and (B) describe the first group of refinanced loans—those continuously refinanced using tax-exempt sources—and state that such loans qualify for a SAP at the 9.5 percent minimum return rate.

These regulations rest squarely on the Department's interpretation of the HEA as articulated in previous guidance issued in DCL 93–L–161 (November 1993), p. 13; Dear Colleague Letter 93–L–163 (December 1993), p. 2. Under the Department's interpretation of the regulations included in the DCLs, loans that were eligible for the 9.5 percent SAP rate prior to a tax-exempt refinancing remained eligible after that refinancing. Because refinancing from tax-exempt sources does not alter eligibility of the loan for the 9.5 percent SAP rate, there is no need to distinguish between loans involved in a single tax-exempt refinancing and those involved in a series of tax-exempt refinancings. The regulations therefore include in this first group all loans that have been associated only with a tax-exempt refinancing, without regard to the number of those refinancings. The phrase ''financed continuously by tax-exempt obligations,'' in § 682.302(e)(2)(i)(B)(*2*) simply describes loans associated exclusively with tax-exempt refinancing.

The regulations do not exclude from eligibility for the 9.5 percent SAP loans affected by other refinancings. The Department's regulations in § 682.302(e)(2)(ii) describe loans refinanced from sources other than qualified tax-exempt sources. This second group consists of two subgroups, which are distinguished by the treatment of the tax-exempt obligation affected by the refinancing. If the prior tax-exempt obligation is retired or deceased, SAP is payable at the taxable rate. This rule has been in effect since 1985. If the prior tax-exempt obligation has not been retired or defeased, SAP remains payable at the 9.5 percent minimum return rate as discussed in DCL 96–L–186 (March 1996).

The regulations use the words ''a loan is refinanced'' to describe the refinancing of an individual student loan. The term ''refinance'' is commonly used as well to refer to the refunding of an outstanding bond or other financial obligation. The regulations in § 682.302(e)(2)(i) use the phrase to refer to a bond or other instrument issued to refund an existing bond or other obligation of the issuer.

Changes: Section 682.302(e)(2) as revised in the interim final regulations effectively explains the applicability of the SAP rates and so it is not necessary for us to retain paragraph (c)(5) of § 682.302. Therefore, subparagraph (c)(5) is removed.

Comments: One commenter objected to the explanation in § 682.302(f)(2) that a bond is considered to be ''originally issued'' when issued to obtain funds to make or acquire loans in which the Authority did not have an interest. This explanation, the commenter noted, would exclude a tax-exempt obligation issued to refund an existing taxable bond or to refinance loans already held by the Authority. The provision would thus disqualify from eligibility for the 9.5 percent SAP loans acquired with proceeds of those obligations, even if they had been issued prior to October 1, 1993.

Discussion: The provision addressing the phrase ''originally issued'' is used to explain how the October 1, 1993, deadline affects at least four different types of tax-exempt obligations: (a) Obligations used to obtain funds to make loans or acquire loans from third parties; (b) obligations that refund a pre-October 1, 1993, qualifying obligation or are part of a series of such refunding issues; (c) obligations used to refund a taxable obligation of the issuer; and (d) obligations used to obtain funds to acquire loans that the Authority made or purchased using funds from either a taxable obligation or a tax-exempt obligation issued on or after October 1, 1993, but not to refund that obligation.

The language in § 682.302(f)(2) to which the commenter objects clearly applies to the ''new money'' issues, described in paragraph (a) above. However, we agree with the commenter that the language could be read to exclude from tax-exempt special allowance treatment loans acquired with funds from tax-exempt obligations described in paragraphs (c) and (d), even if the tax-exempt bond had been issued before October 1, 1993. That result would be contrary to the position taken in the 1985 regulations and contrary to our intent in using this particular language.[1] We also believe that the language should be revised to make it clear that a tax-exempt refunding, or series of such refundings, of a tax-exempt obligation does not change the SAP status of loans made or purchased with funds obtained from the first such tax-exempt obligation so refunded, as described in paragraph (b).

Changes: The interim final regulations were intended to state, and not change, existing law. Accordingly, we have revised § 682.302 to state, in new paragraph (f)(2)(i), that an obligation the proceeds of which are used to make or purchase loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date it is issued. The limitation that loans are considered purchased only if the Authority has neither an existing legal or equitable interest in the loan is removed. Second, the regulation is revised to add a new paragraph (f)(2)(ii) to address specifically a tax-exempt obligation that refunds, initially or in a series of such refundings, a tax-exempt obligation the proceeds of which were used to make or purchase loans (one described in paragraph (f)(2)(i)). Such a tax-exempt refunding obligation is considered to be originally issued on the date on which the initial tax-exempt obligation, described in paragraph (f)(2)(i), was issued.

Basic Program Agreement (§ 682.401)

Comments: One commenter requested that we revise § 682.401(b)(10)(iii) to clarify that a lender is required to charge an insurance premium or Federal default fee.

Discussion: Sections 682.401(b)(10)(i)(A) and (B) clearly states, with the exception of a Consolidation Loan or SLS or PLUS Loan refinanced under § 682.209(e) or (f), the requirements on the collection of insurance premiums and Federal default fees by a guaranty agency. Further clarification is unnecessary.

Changes: None.

Comments: Several commenters requested that a change be made to § 682.401(b)(14) to reflect the payment to lenders of exempt, lender-of-last-resort, and other claims that may be paid at 100 percent insurance.

Discussion: This section of the FFEL regulations outlines the basic program agreement between the guaranty agency and the Secretary. Specifically, § 682.401(b)(14) outlines the guarantee

[1] The term purchase includes acquisition of an interest in a loan by means of a pledge of the loan, and the 1985 regulations implicitly interpret the term purchase as used in section 438 of the HEA to include acquisition of a loan by pledge, not merely acquisition from another party.

liability of the agency, which relates primarily to the payment of default claims. Although other kinds of claims may be paid on a loan, we do not believe that it would be appropriate to include these other claim types, none of which can be reasonably anticipated at the time of guarantee, in § 682.401(b)(14).

Changes: None.

Comments: Several commenters stated that the HERA revised section 428(c)(2) of the HEA to require guarantors to establish procedures to ensure that Consolidation Loans are not an excessive proportion of the guaranty agency's recoveries on defaulted loans, but objected to the inclusion in § 682.401(b)(29) of the requirement that guarantors submit these procedures to the Secretary for approval.

Discussion: We believe that if a guarantor is required by law to establish procedures to ensure that Consolidation Loans are not an excessive portion of the agency's recoveries on defaulted loans, then the Secretary has a fiscal responsibility to review and approve such procedures. The requirement to submit these procedures to the Secretary for approval is also authorized by § 682.401(d)(2).

Changes: None.

Identity Theft (§§ 682.402 and 685.215)

Comments: Many commenters expressed concern regarding the provisions of the interim final regulations that implement the HERA provisions relating to the discharge of an FFEL or Direct Loan that was falsely certified as the result of the crime of identity theft. Several commenters felt that a definition of identity theft based on the adjudication of a crime is too narrow and burdensome and that we should adopt the definition of identity theft used in the Fair Credit Reporting Act (FCRA) and by the Federal Trade Commission (FTC).

Many commenters felt that tying a discharge of an FFEL or Direct Loan to a determination by a Federal, State or local court that the crime of identity theft had occurred, and requiring documentation of that fact, was unduly restrictive. The commenters believed that requiring victims whose cases are actually prosecuted to await the outcome of a judicial process for relief fails to provide discharges and reimbursements in a timely fashion and fails to offer victims of identity theft proper relief. Several commenters asked for clarification on how a loan would be discharged under the common law defense of forgery if a law enforcement agency does not pursue a perpetrator of identity theft. Finally, the commenters requested that we immediately adopt an explicit, reliable process that provides sufficient protection to bona fide victims of identity theft and that we also track cases of unresolved identity thefts within the Department.

Several commenters did not agree with the requirement that a lender and guarantor demand payment on a discharged loan from the perpetrator and pursue collection action if payment in full is not received. These commenters urged the Department to allow guarantors either to subrogate loans discharged based on identity theft to the Department or refer the loans to the appropriate enforcement agencies for action.

Several commenters stated that the provisions related to identity theft would be better placed in a discrete section of the regulations. They believe this approach would facilitate processing and reporting, and ensure that lenders, guarantors, and other program participants have access to comprehensive regulations in a single, identifiable section.

Several commenters noted inconsistencies between the regulations and the preamble with respect to identity theft. These commenters state that the preamble erroneously suggested that the new regulations provide for reimbursement to the loan holder only when perpetrator is affiliated with the school. The commenters requested that preamble to the final regulations accurately describe the identity theft provisions in this regard.

Discussion: The HERA amended the HEA to authorize a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility was falsely certified because the borrower was a victim of the ''crime'' of identity theft. The HERA specifically provides for a loan discharge only when a ''crime'' of identity theft has occurred. For this reason, the interim final regulations provide relief only to the victim of a proven crime of identity theft.

The purpose of the Fair and Accurate Credit Transactions Act (FACT) (which amended the FCRA) and similar legislation and the FTC rules is to enable individuals who believe that their identifying information has been misappropriated to alert parties who might extend credit to the thief based on that stolen identity information. The purpose of the identity theft provision in the HEA is different—to relieve borrowers and lenders from liability on loans that result from proven misuse of that information. Thus, the FACT Act requires credit reporting agencies to post ''fraud alerts'' on an individual's credit record to deter lenders from extending credit to a thief who uses the stolen identity information, and to block the reporting of any information on the record that the individual identifies as resulting from that identity theft. 16 U.S.C. §§ 1681c–1, 1681c–2. There is little, if any, substantive difference between the FACT Act definition of ''identity theft'' in 16 U.S.C. § 1681a(q)(3) and the descriptive definition used in the interim final regulations. Therefore, there is no reason to use the specific FACT Act definition.

The commenters' claim that the regulations are unduly restrictive is contrary to American common law. As indicated in the preamble to the interim final regulations, under generally applicable laws, individuals who do not apply for loans, execute promissory notes for loans or knowingly accept the benefits of loan disbursements are not liable to repay those loans, even if their names were forged on the loan instrument. An individual who claims that his or her signature was forged is not required to delay asserting that claim until a criminal prosecution occurs and nothing in the Department's regulations require such a delay. An individual who claims that his or her signature was forged can assert that claim to oppose liability on a loan and the holder of the loan must evaluate and accept or reject that claim whether or not a criminal prosecution occurs.

The regulations require the guaranty agency, not the lender, to demand payment from the perpetrator of the identity theft. Guaranty agencies must ordinarily use due diligence to collect FFEL Program loans and the perpetrator is liable for such a debt. In some instances, the Department may choose to take assignment of the debt. However, the regulations do not require a guaranty agency to take unusual or extraordinary steps to collect this debt.

The comment that the regulations regarding identity theft discharge relief should be placed in a separate section does not explain why such treatment would improve clarity of the procedure. The provisions added in the interim final regulations implement a specific discharge provision added by the HERA to the other discharge relief available under section 437(c) of the HEA. The regulations are not intended to provide general guidance on handling claims that loan applications or promissory notes have been forged where the claim does not rest on a proven crime. Because each provision for discharge relief under section 437(c) of the HEA offers relief to borrowers or purported borrowers by payment to the holder of the loan, it is logical to include

procedures for handling claims under the new discharge provision among the existing procedures for claims for other kinds of discharge relief.

The comment suggesting that the Department adopt a process for tracking what it refers to as unresolved identity thefts does not appear to be practicable at this time. To the extent that this proposal is meant to deter lenders from extending new credit based on new false applications using the same individual's identity, the proposal duplicates the procedure already required under the FACT Act. Lenders must obtain a credit report in order to qualify an applicant for a PLUS Loan, and therefore, the alert option available under the FACT Act can be expected to provide effective prospective relief with respect to applications for PLUS Loans.

Implementation of a system that would prospectively protect alleged victims of identity theft from misuse under all the student loan programs requires participation and input from many participants in the loan programs. Such a process may be both costly and complicated. The Department is open to considering practical proposals in the future.

Finally, the commenter is correct that there are inconsistencies between the preamble to the interim final regulations and the interim final regulations, themselves, regarding reimbursement to the loan holder when the perpetrator of identity theft is affiliated with a school. As noted in the preamble to the interim final regulations, § 682.402(e)(1)(i)(B) of the false certification discharge provisions has, since 1994, made discharge relief, with the accompanying reimbursement to the lender, available in instances in which an individual's signature was forged on a promissory note or loan application by the school. If the forgery is not committed by someone affiliated with a school, the purported borrower would not ordinarily be legally liable for the loan. However because the loan is not legally enforceable against the borrower, the loan does not qualify for any FFEL payments from the Department. The new identity theft provision in § 682.402(e)(1)(i)(C) allows the lender to be reimbursed when the loan was made by reason of a crime of the theft of the identity of the purported borrower, without regard to whether the thief was affiliated with a school. The final regulations bar payment to the lender if the theft was committed by the lender or an agent of the lender. The preamble to the interim final regulations accurately stated these elements of the regulation. We will revise § 682.402(e)(1)(iii)(A) to be consistent with the preamble discussion in the interim final regulations.

While we believe that the interim final regulations are fully consistent with the HEA and other laws, we are sympathetic to the concerns of the commenters. We intend to include this issue on the agenda for a future negotiated rulemaking to possibly consider other approaches.

Changes: Section 682.402(e)(1)(iii)(A) has been revised by adding the word ''not'' before the words ''pay reinsurance''.

Rehabilitation of Defaulted Loans (§ 682.405(a)(2)(i)(B))

Comments: Several commenters stated that the regulations for rehabilitation of a defaulted loan do not account for borrowers who make only sporadic payments before beginning the required number of qualifying payments to rehabilitate the loan. They also claimed that the regulations did not reflect the 20-day grace period for a timely payment as provided in the statute.

Discussion: We believe the regulations accurately reflect the HEA and Congressional intent. Borrowers must request, or in some fashion initiate, loan rehabilitation so that the period during which the 9 qualifying payments must be made is clear for both the guaranty agency and the borrower.

Additionally, a reasonable and affordable payment amount needs to be established, and the consequences of loan rehabilitation, such as the addition of collection costs to the rehabilitated loan amount, the post-rehabilitation payment period and the likely increased payment amount, need to be explained to the borrower. Although the borrower can now make 9 qualifying payments over a 10 consecutive month period to rehabilitate a defaulted loan, a borrower should not be encouraged to make late payments or to miss a monthly payment as part of a loan rehabilitation agreement.

Changes: None.

Comments: One commenter noted that the original § 682.405(b)(1)(ii) through (v) had been removed from the interim final regulations and asked if this was intentional.

Discussion: We thank the commenter for bringing this inadvertent drafting error to our attention.

Changes: We have reinserted these paragraphs and renumbered them accordingly.

Special Insurance and Reinsurance Rules (§ 682.415)

Comments: Some commenters asked the Secretary to interpret the change in the HERA that reduced the insurance percentage paid to lenders and lender servicers that have been designated as ''exceptional performers'' not to apply to loans for which the first disbursement was made before October 1, 1993. These commenters noted that, prior to October 1, 1993, the HEA required guaranty agencies to provide 100 percent insurance to lenders, but that rate was later reduced to 98 and 97 percent. Until enactment of the HERA, however, lenders or lender servicers who were designated as exceptional performers received 100 percent insurance on all claims. The HERA reduced the insurance for exceptional performers to 99 percent. The commenters argue that the HERA should not be interpreted to reduce the insurance on loans for which the first disbursement was made before October 1, 1993 to 99 percent for exceptional performers. The commenters also argue that to interpret the HERA to apply to loans for which the first disbursement was made before October 1, 1993, would violate the lenders' contractual and Constitutional rights.

Discussion: The Secretary does not agree with the commenters. The HERA amended section 428I(b)(1) of the HEA to provide that a lender or lender servicer designated for exceptional performance would receive 99 percent insurance on ''all loans for which claims are submitted for payment by that eligible lender or servicer for the one-year period'' for which the lender or lender servicer has been designated. In making this change, Congress eliminated all references to 100 percent insurance for exceptional performers. Congress did not retain the 100 percent insurance for any group of loans. Thus, there is no statutory basis for the Secretary to authorize 100 percent insurance on any claims submitted by an exceptional performer after the effective date of the HERA (July 1, 2006).

The Secretary also does not agree that this change violates any contractual or constitutional rights of a lender. A lender chooses to apply for exceptional performer status because of the benefits it provides to the lender. A lender is not required to apply for such status or to retain such status after it has been granted. Moreover, Congress can modify the terms of the exceptional performer status or end it completely without any violation of a lender's rights. In the HERA, Congress chose to reduce the insurance coverage on loans held by exceptional performers that were made before October 1, 1993, apparently as a way of offsetting the overall costs of providing higher insurance coverage to

exceptional performer lenders and lender servicers than to others. A lender or lender servicer that has been designated as an exceptional performer can still receive 100 percent insurance on loans disbursed prior to October 1, 1993 by relinquishing its exceptional performer status. By relinquishing its exceptional performer status, however, it will be accepting a lower insurance rate on all other claims.

Changes: None.

School as FFEL Lender (§ 682.601(a) and (b))

Comments: Many commenters asked that we clarify the regulations regarding a school lender's use of proceeds from the sale or other disposition of loans for need-based grants. These same commenters questioned the difference between the items identified in the parenthetical phrase in § 682.601(a)(8) and those identified as not considered ''reasonable and direct administrative expenses'' in § 682.601(b) and asked that these discrepancies be eliminated.

One commenter requested that we identify the mandated costs of reduced origination fees and reduced interest rates as allowable, reasonable and direct administrative expenses for school lenders. A couple of commenters asked for guidelines on how a school lender should use loan proceeds for required need-based grants in a manner that would supplement, but not supplant non-Federal funds that would otherwise be used for need-based student grant programs. The commenters also noted that no definition of need-based grant was provided in the regulations. One of those same commenters also asked us to clarify that a school operating as a FFEL school lender would not be prohibited from providing assistance to its students, other than Stafford Loans, from institutional sources. Another commenter stated that required need-based grants from loan proceeds should be based on the school lender's actual net loan proceeds from the prior year.

One commenter suggested that § 682.601(a)(9) be revised to clarify that the loans a school lender must make prior to April 1, 2006 be FFEL program loans. Another commenter asked us to clarify whether a FFEL school lender was required to conduct a separate independent audit of its lender operation.

Discussion: In reviewing the regulatory provisions that address the use of loan proceeds for need-based grants and allowable, reasonable and direct administrative expenses, we agree that further clarification is appropriate.

We believe that certain FFEL school lender's mandated or required expenses can be characterized as programmatic expenses, but not as direct administrative expenses under the HEA. As a result, § 682.601(b) specifies that reasonable and direct administrative expenses do not include the costs associated with securing financing, the cost of offering reduced origination fees or reduced interest rates to borrowers, or the cost of offering reduced Federal default fees to borrowers. However, we have decided to permit a school lender to exclude the costs of other statutorily mandated or necessary programmatic expenses from the calculation of ''proceeds from the sale or other disposition of loans'' that must be used for need-based grants. The parenthetical phrase in § 682.601(a)(8) addresses this exclusion. Certain optional costs, such as reduced Federal default fees, are not covered by the exclusion from loan proceeds or as a reasonable and direct administrative expense.

A school that is also a FFEL Program lender should be able to demonstrate on an ongoing basis that there is no pattern or practice of reducing institutional funds available for use as non-Federal need-based grants or scholarships as a result of the availability of lender produced funds that must also be used for need-based grants.

An institution's continued commitment to use institutional as well as school lending-produced proceeds for this purpose will demonstrate that the school is supplementing, not supplanting, institutional funds committed to need-based grants and scholarships.

We will not dictate a specific approach a school lender must use to determine its budget for need-based grants from lending-produced proceeds. The lender must be able to show clearly that all proceeds from the sources listed in § 682.601(a)(8), except for those authorized to be used for reasonable and direct administrative expenses and other required programmatic costs that can be netted from proceeds, are used for need-based grants. We understand that award commitments are made in advance of the start of the school's academic year and that this period does not generally correspond with the school lender's fiscal year. Determining the pool of funds available for need-based grants based on the school lender's immediately preceding fiscal year's lending performance, with an additional factor for increased proceeds based on increased loan volume, if applicable, would appear to be a reasonable approach. ''Need,'' for purposes of need-based grants, is documented need for Title IV, HEA program purposes. The provisions governing FFEL school lenders do not prohibit the school from making other forms of student financial assistance available to its students.

As provided in § 682.601(a)(7) and discussed in the preamble of the interim final regulations, a FFEL school lender must submit a compliance audit as a lender in accordance with the requirements contained in § 682.305(c)(2) for any fiscal year in which the school engages in activities as an eligible lender, beginning with the first fiscal year beginning on or after July 1, 2006. School lenders subject to the Single Audit Act, 31 U.S.C. 7502, will be required under § 682.601(a)(7) to include its FFEL Program lending activities in the annual audit and to include information on those activities in the audit report, whether or not the lending activities or the student financial aid programs are considered a ''major program'' under the Single Audit Act. Other school lenders will have to arrange for a separate audit of their lending activities using the Lender Audit Guide available through the Department of Education's Office of Inspector General.

In making the changes to clarify the audit requirements, we determined that § 682.305(c)(2)(v) and (vi) included outdated references to other Departmental regulations and audit requirements. We have corrected the citations to the audit requirements for governmental entities in § 682.305(c)(2)(v). We have also added nonprofit organizations to § 682.305(c)(2)(v), because amendments to the Single Audit Act apply the same requirements to governmental entities and nonprofit organizations. We have removed the separate discussion of audit requirements for nonprofit organizations in § 682.305(c)(2)(vi) and replaced it with a cross-reference to the school lender audit requirements.

Changes: The requirement that school lenders have an annual audit in § 682.601(a)(7) has been amended to clarify that, in addition, a school lender subject to the Single Audit Act must in addition during years when the student financial aid cluster, as defined in OMB Circular A–133 Compliance Supplement, is not audited as a major program, also audit the school's lending activities as a major program under the Single Audit Act. This additional requirement is without regard to the amount of loans made. We have also made technical corrections to § 682.305(c)(2) as discussed above.

Section 682.601(a)(8) has been revised to remove the words ''which does not include providing origination fees or interest rates at less than the fee or rate

authorized under the provisions of the Act'' following the words ''need-based grants'' and before ''; and''. A technical change has also been made to § 682.601(a)(9) to reflect the requirement that an eligible school lender must have made one or more FFEL program loans on or before April 1, 2006.

Processing Loan Proceeds (§§ 682.604 and 685.304)

Comments: Several commenters recommended requiring entrance and exit counseling for graduate or professional students who borrow PLUS Loans. The commenters noted that a graduate or professional student PLUS borrower who has not also borrowed a Stafford Loan would never have had the benefit of Stafford Loan entrance or exit counseling. In addition, these commenters recommended that the exit counseling clarify the different repayment rules for PLUS loans and Stafford Loans. Two commenters suggested that graduate or professional students with both Stafford Loans and PLUS Loans could be exempted from the entrance counseling requirement for their PLUS Loans, because these borrowers would have already received entrance and exit counseling on their Stafford Loans.

Discussion: The HEA exempts PLUS Loan borrowers from exit counseling requirements. Although the Secretary encourages institutions to provide exit counseling to graduate and professional student PLUS Loan borrowers, the Secretary does not have the authority to require such counseling by regulation.

With regard to entrance counseling, FFEL lenders are already required, under § 682.205, to provide extensive disclosure information to borrowers before disbursing a loan. This disclosure information, which can be provided through either the rights and responsibilities statement or a plain language disclosure sent to the borrower, includes an explanation of when repayment of the loan is required. Lenders are also required to provide a disclosure to borrowers prior to the loan going into repayment. This disclosure must include the borrower's repayment schedule, the due date of the first installment payment, and the number, amount, and frequency of payments. For Direct Loans, the Department provides essentially the same information to borrowers that FFEL lenders provide under § 682.205. We believe that these disclosures are sufficient for the limited number of graduate or professional student PLUS borrowers who have not received Stafford Loan entrance counseling.

Changes: None.

Comments: One commenter requested that PLUS Loans be covered in the overaward language in § 682.604(h) because graduate and professional students are now eligible PLUS Loan borrowers.

Discussion: We agree with the commenter that the overaward language should be amended to include student PLUS Loans.

Changes: Section 682.604(h) has been amended to reflect this change. We have also made the same change in § 685.303(e) of the Direct Loan Program regulations.

Borrower Eligibility (§ 685.200)

Comments: Several commenters recommended that we revise § 685.200(b)(1)(iv) to allow a student Direct PLUS Loan applicant who is determined to have an adverse credit history to receive a Direct PLUS Loan if the student obtains an endorser who does not have an adverse credit history. The commenters noted that the endorser option is available to student PLUS applicants in the FFEL Program.

Discussion: We did not intend to deny student applicants for Direct PLUS Loans the option of obtaining an endorser.

Changes: We have revised § 685.200(b)(5) of the regulations to more clearly reflect that a student Direct PLUS Loan applicant who is determined to have an adverse credit history may receive a Direct PLUS Loan if he or she obtains an endorser who does not have an adverse credit history, or documents to the satisfaction of the Secretary that there are extenuating circumstances.

Charges for Which Direct Loan Borrowers Are Responsible (§ 685.202)

Comments: Several commenters suggested that we revise § 685.202(a)(3) to provide that the portion of a Direct Consolidation Loan that is attributable to Health Education Assistance Loan Program (HEAL) loans is subject to the same interest rate provision that applies to Federal Consolidation Loans under § 682.202(a)(4)(v). The commenters noted that section 455(a)(1) of the HEA, as amended by the HERA, requires Direct Consolidation Loans and Federal Consolidation Loans to have the same terms, conditions, and benefits, unless otherwise specified in Part D of the HEA.

Discussion: The HERA amended the HEA to require that Direct Consolidation Loans have the same terms, conditions, and benefits as Federal Consolidation Loans, unless otherwise specified in the law. However, in this case, there is a specific interest rate provision for Direct Consolidation Loans in section 455(b)(7)(C) of the HEA, and that provision does not specify a different interest rate for the portion of a Direct Consolidation Loan that is attributable to HEAL Loans. Therefore, Direct Consolidation Loans are not subject to the provision that applies to Federal Consolidation Loans under section 428C(d)(2) of the HEA.

Changes: None.

Repayment Plans (§ 685.208)

Comments: Several commenters suggested that the HERA requires that the graduated and extended repayment plans do not require a borrower to repay the minimum amount allowed under statute. In addition, these commenters suggested that a borrower's monthly payments under these repayment plans must be at least the amount of interest and that we add a provision that would disallow single graduated payments that exceed three times any other graduated installment payment.

Discussion: We agree that the minimum annual repayment rules should not apply to a graduated repayment plan. The HEA exempts graduated and income sensitive repayment plans from the minimum annual repayment provisions. The HEA does not exempt extended repayment plans from the minimum annual payment requirement. In addition, the FFEL Program regulations state that graduated and income sensitive repayment plans may have installments less than the minimum. However, the FFEL Program regulations do not provide for extended repayment plans to have installments less than the minimum annual payment amount. The final regulations provide that the 10-year graduated repayment plan and the extended repayment plan can have graduated payments.

We do need to add to the regulations for the graduated repayment plan, for borrowers entering repayment on or after July 1, 2006, a provision that does not allow any single installment payment to be more than three times the amount of any other payment.

Although the HEA does not specifically require that the payments must be at least the amount of interest, we agree that the regulations would be clearer by including a provision that monthly payments on all Direct Loan Program repayment plans must be at least the amount of the monthly accrued interest, except that the monthly payment amount under the Income Contingent and Alternative repayment plans may be less than the monthly accrued interest.

Changes: We have revised § 685.208(g)(3) and 685.208(h)(2) to provide that, under a graduated repayment schedule, a borrower's payments may be less than $50 a month and any single installment payment may not be more than three times the amount of any other installment payment.

We have added a new paragraph (a)(2)(iv) in § 685.220 of the Direct Loan repayment regulations to provide that monthly repayment plans, except Income Contingent and Alternative repayment plans, must be at least the amount of the monthly accrued interest.

Consolidation (§ 685.220)

Comments: Several commenters recommended that we revise § 685.220(c)(1) to clarify that, if a Federal Consolidation Loan is consolidated into a Direct Consolidation Loan, only the portion of the Federal Consolidation Loan that qualified for an interest subsidy will be included in the subsidized portion of the new Direct Consolidation Loan. The commenters noted that in many cases, only a portion of a Federal Consolidation Loan qualifies for an interest subsidy.

Discussion: We agree that the current regulatory language is unclear with respect to the treatment of Federal Consolidation Loans that are included in the subsidized portion of Direct Consolidation Loans.

Changes: We have revised § 685.220(c)(1) to clarify that only the portion of a Federal Consolidation Loan that qualified for an interest subsidy will be included in the subsidized portion of a Direct Consolidation Loan.

Comments: Several commenters pointed out that § 685.220(d)(1)(ii)(E) and (F) prohibit a borrower from consolidating a loan that is subject to a judgment or an order for wage garnishment unless the judgment has been vacated or the wage garnishment order has been lifted at the time the borrower applies for a Direct Consolidation Loan. In contrast, the corresponding FFEL Program regulations in § 682.201(c) provide that a judgment or wage garnishment order must have been vacated or lifted at the time a Federal Consolidation Loan is made. The commenters recommended that we revise § 685.220 to be consistent with the FFEL Program requirements related to the consolidation of loans subject to a judgment or wage garnishment.

Discussion: We agree with the commenters that the Direct Loan Program regulations should make it clear that the judgment and wage garnishment eligibility requirements must be met at the time the Direct Consolidation Loan is made rather than at the time of the borrower's application for the loan.

Changes: We have revised § 685.220(d) to clarify that the eligibility requirements for consolidating a loan subject to a judgment or wage garnishment must be met at the time a Direct Consolidation Loan is made.

Comments: To ensure that Direct Loan Program borrowers have the same options for resolving a default as FFEL Program borrowers, some commenters recommended that the Secretary clarify in the regulations that a borrower with a defaulted Direct Consolidation Loan remains eligible for loan rehabilitation with a repayment plan that provides for reasonable and affordable payments such as those available under an income contingent repayment plan. Other commenters recommended that the Secretary amend the Direct Loan Program regulations to allow a borrower to consolidate a defaulted Direct Consolidation Loan if the borrower first makes satisfactory repayment arrangements on the defaulted loan and includes at least one additional eligible loan in the consolidation.

Discussion: There is nothing in the regulations that prohibits a borrower with a defaulted Direct Consolidation Loan from entering into an agreement to rehabilitate that loan under a repayment plan that provides for reasonable and affordable payments.

We agree that the Direct Loan Program regulations, as currently written, might suggest that a borrower with a defaulted Direct Consolidation Loan is ineligible to consolidate that loan into a new Direct Consolidation Loan under any conditions. However, this was not our intent. A borrower with a defaulted Direct Consolidation Loan may consolidate that loan into a new Direct Consolidation Loan if the borrower includes at least one additional eligible loan in the consolidation, and meets the other eligibility requirements that apply to borrowers who wish to consolidate a defaulted loan.

Changes: We have revised the regulations in § 685.220(d)(1)(ii) to clarify that a borrower may consolidate a defaulted Direct Consolidation Loan if the borrower: (1) makes satisfactory repayment arrangements on the defaulted loan or agrees to repay the new Direct Consolidation Loan under the income contingent repayment plan; and (2) includes at least one additional eligible loan in the consolidation.

Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program (§ 685.300)

Comments: Several commenters recommended that we amend the regulations to reflect the Department's previous guidance that a school that awards Direct Subsidized Loans and Direct Unsubsidized Loans to its graduate or professional students through the Direct Loan Program may award PLUS Loans to its graduate or professional students through the FFEL Program, and that a school may also award Direct PLUS Loans to its graduate and professional students through the Direct Loan Program and Subsidized and Unsubsidized Federal Stafford Loans through the FFEL Program.

Discussion: We agree that the Department's prior guidance should be incorporated in the regulations.

Changes: We have revised § 685.300(b)(8) to clarify that a school may award a PLUS Loan to a parent or to a graduate or professional student through either the Direct Loan Program or the FFEL Program, and a Stafford Loan through the other loan program to a dependent undergraduate or graduate or professional student borrower for the same period of enrollment. However, a school may not award the same type of loan (i.e., Stafford or PLUS) from different loan programs to the same student or parent borrower for the same period of enrollment.

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 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 set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. The Secretary accordingly has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

These final regulations are needed to implement recent amendments to the HEA that affect students, borrowers and program participants in the Federal student aid programs authorized under Title IV of the HEA.

The Secretary has limited discretion in implementing most of these provisions. The majority of the changes included in these final regulations simply modify the Department's regulations to reflect statutory changes made by the HERA and the other laws mentioned earlier. These statutory provisions are either already effective or will be effective shortly.

The Secretary has exercised limited discretion in implementing the HERA provisions in the following areas:

- *Direct Assessment:* The HERA extends eligibility for Title IV, HEA programs to instructional programs using or recognizing the use by others of direct assessment of student learning;
- *Identity Theft:* The HERA authorizes a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft; and
- *Special Allowance Payments:* The HERA modifies the conditions under which a loan holder qualifies for special allowance interest benefits related to PLUS loans the first disbursement of which was made on or after January 1, 2000.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the HERA provisions.

Regulatory Alternatives Considered

Direct Assessment Alternatives: In developing the direct assessment regulations, the Secretary drew upon the Department's experience with Western Governors University (WGU), the only institution currently participating in the Title IV student financial assistance programs that uses direct assessment, in lieu of credit or clock hours, as a measure of student learning. WGU became an eligible institution by participating in the Distance Education Demonstration Program.

The Secretary looked at how the Title IV student financial aid rules had been applied in both the nonterm and non-standard term models employed by WGU and identified basic principles on which to base the regulations. One principle is that institutions that use direct assessment would need to develop equivalencies in credit or clock hours in terms of instructional time for the amount of student learning being assessed. This was necessary because many applicable Title IV, HEA program requirements use time and/or credit or clock hours to measure things other than student learning. In addition, institutions would have to define enrollment status, payment periods, and satisfactory academic progress.

A second principle is tied to the statutory language that characterizes direct assessment programs as instructional programs. The Secretary determined that institutions must provide a means for students to fill in the gaps in their knowledge and that Title IV, HEA program funds should only be used to pay for learning that occurs while the student is enrolled in the program.

The Secretary considered what should constitute ''instruction'' in a direct assessment program. The word ''instruction'' is not specifically defined in the Department's regulations and, in its ordinary meaning the word connotes teaching. There are several other ways, however, in which an institution might assist students to prepare for assessments. The Secretary considered whether the definition of instructional time in § 668.8(b)(3), which is used for other types of programs, could be used for direct assessment programs and determined that the definition was not sufficiently broad to be used in this context.

The Secretary recognized that institutions offering direct assessment programs might use courses or learning materials developed by other entities, such as training and professional development organizations and other educational institutions, to assist students in preparing for the assessments. The Secretary considered whether the use of outside resources could be considered contracting out a portion of an educational program and determined that it could be. Therefore, the Secretary included in the direct assessment regulations a provision that exempts direct assessment programs from the limitations on contracting for part of an educational program.

Identity Theft Alternatives: Section 8012 of the HERA authorizes a discharge of a FFEL or Direct Loan Program loan under section 437(c) of the HEA if the eligibility of the borrower was falsely certified as a result of the crime of identity theft. In developing regulations to implement section 8012, we sought to reflect the statutory language that requires the Department to discharge the borrower's responsibility to repay the loan when a ''crime of identity theft'' has occurred. The final regulations require that to receive a discharge on a loan, an individual must provide the holder of the loan, a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is the named borrower of the loan was the victim of the crime of identity theft. We adopted this standard as an inexpensive and reliable way to implement the new discharge provision. If the perpetrator of an identity theft is never prosecuted, and no judicial determination that a crime occurred is rendered, a borrower can still be relieved of any responsibility to repay the loan under the common law (and in many instances, State law) defense of forgery. We stressed this consideration in the preamble to the interim final regulations.

One alternative we considered was to authorize a discharge for ''identity theft'' based on representations from the individual, much as is now done for closed school discharge relief, that the crime of identity theft had been committed, and that the claimant was the victim of that criminal act. We rejected this alternative as costly, unworkable, and unnecessary to provide relief to the individuals who may be victims of this crime. Under this alternative, the claimant and/or the lender would be required to submit evidence needed to establish whether conduct has occurred that would constitute the crime of identity theft. That evidence may be voluminous, difficult to obtain, and would likely include witness testimony. Amassing and transmitting that evidence would be difficult and costly for lenders and claimants. Furthermore, determining whether a crime has been committed requires discerning the identity of the perpetrator and determining the state of mind of that person. Neither the Department nor the guaranty agency is authorized to determine whether that evidence shows that a crime has been committed. That determination is routinely and reliably made through the judicial process, which is designed to perform this function. Moreover, there

is no need to ignore the judicial process in order to give relief to those individuals who did not in fact take out the loans for which they are listed as borrowers. Under State statutes and common law, individuals whose signatures have been forged on loan documents are not liable for those debts. Individuals who show that their signatures have been forged on loan documents, and that they neither authorized nor received a loan made in their name, are not held liable by the Department. For these reasons, we rejected the alternative that would entail an extra-judicial proof of a crime. Instead, we simply require the claimant to submit a copy of a judicial verdict that identity theft was committed.

Special Allowance Payment Alternatives: The Department considered a number of alternatives related to the effective date for implementation of section 8006 of the HERA, which eliminates the limitation that special allowance payments on PLUS Loans for which the first disbursement was made on or after January 1, 2000, only be paid if the formula for determining the borrower interest rate produces a rate that exceeds the statutory maximum borrower rate of 9 percent.

The first alternative was to make this provision retroactive to January 1, 2000, an approach that would result in substantial additional special allowance payments to many PLUS Loan holders. Although this option was suggested by some members of the student loan industry, the Department determined that this approach was inconsistent with the statute.

Other alternatives considered reflected differing interpretations of the provision's effective date. Section 8006 states that ''amendments made by this subsection shall not apply with respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1) before April 1, 2006.'' Since special allowance payments are made on a quarterly basis, the Department had to determine whether the statute's intent was to remove the limitation on PLUS special allowance payments for the quarter of January–March 2006—the first quarter for which bills would be submitted, verified, and paid after April 1, 2006 or for the quarter of April–June 2006, the first full quarter after the HERA's enactment. The Department estimated Federal costs would increase by $53 million if the limitation was removed for the January–March quarter. This estimate was based on data on special allowance rates and balances for the affected quarter. After a careful review of the statutory language, the Department determined that the statute's likely intent was to remove the limitation for the January–March 2006 quarter, since this was the first quarter for which payments would be made after April 1, 2006. The final regulations reflect this determination.

Benefits

Given the breadth of these regulations, the discussion of benefits and costs will be limited in most cases to provisions with an economic impact of $100 million or more in any one year. By facilitating the implementation of changes made in the HERA and other recent student aid-related statutes, these final regulations will support the provision of a broad range of student benefits. In general, these benefits reduce the costs of higher education to students, increase the amount of Federal student aid or increase the number of students eligible for Federal student aid. The economic benefits of any specific change are difficult to discern, as they have direct benefit to the individual aid recipient and broader societal benefits resulting from the economic impact and tax-paying potential of a well-educated population. Research indicates that reductions in the cost of higher education are correlated to increased student enrollment, retention, and completion. The U.S. Census Bureau has found people with a bachelor's degree realize as much as 75 percent higher lifetime earnings than those whose education is limited to a high school degree. (''The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings,'' July 2002.)

Specific benefits provided to student borrowers in these final regulations include increases in certain FFEL and Direct Loan Program loan limits; reduced origination fees in the FFEL and Direct Loan Programs; broadened eligibility for PLUS Loans to include graduate and professional students; expanded access to distance education programs; permanently expanded loan forgiveness for highly qualified math, science, and special education teachers at low-income schools; and a new deferment for FFEL, Direct Loan and Perkins Loan Program borrowers who serve on active duty military service during times of war or national emergency. These benefits are projected to increase Federal outlays by $5.2 billion for loans originated in FY 2006–2010. This estimate was developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Projected loan volume and borrower data are based on trend analyses of actual program activity, primarily drawn from the National Student Loan Data System (NSLDS) and other Department systems.

These estimates were derived from the Department's projections that show that loan volume will increase an estimated $3.2 billion in award year 2007–2008 and $11.6 billion from fiscal year 2006–2010 as a result of higher loan limits. Over the latter period, average loan amounts are estimated to increase by $184 for Stafford Loans and $156 for Unsubsidized Stafford Loans. The phased reduction of loan origination fees is estimated to reduce fees by $5.6 billion on 70,000 loans over award years 2006–2010.

The expansion of distance education made possible by the changes to the ''50 percent rule'' and the definition of correspondence courses will allow institutions to more aggressively pursue new communication technologies to provide students significantly greater flexibility in the scheduling and location of academic programs. The Department estimates this expanded flexibility will increase the pool of students eligible for Federal student aid by 30,000 students a year in 2006 and 2007, of whom 17,000 per year will be eligible to receive a Pell Grant. With an average grant of $2,306, these additional Pell Grant recipients will receive an estimated $196 million in Pell Grant aid over 2006–2010. This estimate is based on a trend analysis of Pell Grant program data and projections of institutional and program eligibility for Federal student aid derived through the use of accreditation data. The Department included in these estimates that additional students made eligible for student aid would borrow $441 million in student loans over 2006–2010.

The regulation's teacher loan forgiveness provisions offer incentives to help address longstanding national and regional elementary and secondary school staffing problems. Many studies (Boe, Bobbitt, & Cook, 1997; Grissmer & Kirby, 1992; Murnane et al. , 1991; Rumberger, 1987) and extensive research prepared for the National Commission on Mathematics and Science Teaching) have found math, science, and special education to be fields with especially high turnover and those predicted most likely to suffer shortages. More than tripling the teacher loan forgiveness amount—from $5,000 to $17,500—for qualifying teachers in these fields should offer a powerful incentive for recruitment and retention, especially given the additional eligibility requirement that recipients

teach for five consecutive years before receiving the benefit. The Department estimates this expanded benefit will increase Federal loan subsidy costs in the FFEL and Direct Loan programs by $825 million for loans originated in 2007–2010. These estimates assume over 32,000 teachers will be eligible for additional forgiveness amounts, increasing the average amount forgiven for those borrowers by approximately $8,500, from $4,700 to $13,300. (The additional benefits were available for loans made in 2006 as a result of the Taxpayer-Teacher Protection Act of 2004, so for the purposes of this analysis additional benefits have only been considered for 2007 and beyond.) This estimate was developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Estimates of borrower eligibility were based on program data—primarily from NSLDS—demographic information from the National Center for Education Statistics' Schools and Staffing Survey.

Lastly, the Department's estimates took into account the creation of a new deferment related to active-duty military service during a war or national emergency is estimated to reduce interest payments by an average of $1,500 for 21,000 borrowers.

In addition to implementing expanded borrower benefits, these final regulations also implement a number of provisions intended to improve the cost-effectiveness and efficiency of the FFEL and Direct Loan programs, streamline program operations for participating institutions, and standardize loan terms and conditions across the two programs. These changes are estimated to reduce Federal outlays by $7.0 billion for loans made in FY 2006–2010, freeing up resources for other urgent requirements. This estimate was also developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Projected loan volume, guaranty agency and lender information, and borrower data are based on trend analyses of actual program activity, primarily drawn from NSLDS and other Department systems.

Provisions intended to enhance loan program efficiency include a number of changes intended to promote risk-sharing by FFEL participants through reduced program subsidies, including: restrictions on higher-than-standard special allowance payments for loans funded through tax-exempt securities; provisions under which the Department will recover excess interest paid to loan holders when student interest payments exceed the special allowance level set in the statute; and a reduction in loan holder's insurance against default from 98 percent to 97 percent of a loan's principle and accrued interest. Given the broad availability of FFEL program loans—over 4,000 lenders provided more than $43 billion in new loans and an additional $53 billion in consolidation loans in FY 2005—these changes are not expected to reduce student and parent access to loan capital.

The student loan industry features high competition among loan providers, using an array of interest rate discounts and other borrower benefits to attract volume. The overwhelming majority of student loans are sold by the originating lender in the secondary market. The impact on individual lenders of HERA provisions reducing Federal subsidies are inestimable; a substitution of subsidies for student interest rate cuts may occur or the secondary market price of securitized loans may be revalued. Given the high level of government guaranty on these loans, as well as the guaranteed rate of return, continued access to loan capital for all borrowers should be assured. The impact on individual loan holders may be mitigated by investment and tax considerations from their investment portfolios as a whole. Higher borrower loan limits and standardized repayment terms may increase long-term interest income to some loan holders under these regulations.

The estimates were derived from changes to limit the payment of higher-than-standard special allowance on loans funded through tax-exempt securities, balances eligible to receive the higher special allowance payments are estimated to decrease from $15.5 billion in FY 2006 to $8.3 billion in FY 2010. While the recovery of excess interest subsidies produced no estimated savings under interest rate projections used for the FY 2007 President's Budget, this policy does save significant amounts under the probabilistic interest rate forecasting methodology used by the Congressional Budget Office and adopted by the Administration for the FY 2007 Mid-Session Review. These savings are not included in the estimate of total savings discussed above, as this was developed prior to the Mid-Session Review. Reducing lender insurance against default from 98 percent to 97 percent is estimated to decrease Federal payments by $37.5 million over FYs 2006–2010.

Lastly, the final regulations include a number of provisions intended to standardize terms and conditions and broaden borrower choices, particularly for consolidation loans. These changes include the repeal of the single holder rule, which limits the ability of FFEL borrowers whose loans are held by a single holder to consolidate with other lenders, and the standardization of graduated and extended repayment plans—previously different for Direct Loans and FFEL—on the FFEL model. The repeal of the single holder rule should give all borrowers access to interest rate discounts and other benefits available through the highly competitive consolidation loan market. The standardization of repayment plan terms will eliminate a possible source of confusion for borrowers and promote equity across the two loan programs. Under this provision, the Department estimates more Direct Loan borrowers who wish to obtain longer-than standard repayment plans will consolidate their loans. As a result, the estimated percentage of Stafford Loan borrowers in standard repayment will increase from 76 percent to 87 percent, while the percentage in graduated and extended repayment will decrease from 23 percent to 11 percent.

These provisions also are expected to improve market transparency and remove transaction barriers for loan borrowers, improving market openness and efficiency for both borrowers and loan providers.

Costs

These final regulations include a number of provisions that will impose increased costs on some borrowers, such as an increase in the loan interest rate for FFEL PLUS borrowers, the elimination of in-school and joint consolidation loans, and the mandatory imposition of the previously optional 1 percent guaranty agency default insurance premium. (At the same time, these provisions will reduce the Federal costs of these programs and, in the case of the guaranty fee, improve the financial stability of guaranty agencies. Only 14 of 35 agencies collected this fee in FY 2005; the mandatory imposition of the fee is estimated to add $1.5 billion to the balance of agency Federal Funds over 2006–2010.) Prior to the HERA, these provisions allowed loan providers or guaranty agencies to discriminate among borrowers through the unequal distribution of borrower costs. While some borrowers may lose unearned benefits through these statutory and regulatory changes, market equitability and transparency are improved.

These final regulations also authorize the Secretary to waive a student's Title IV grant repayment if the student withdrew from an institution of higher education because of a major disaster as

declared by the President in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Secretary will exercise this waiver authority on a case-by-case basis after determining that a major disaster has significantly affected recipients of Title IV grant aid.

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and schools must have already established systems and procedures in place to meet program eligibility requirements. These regulations generally involve discrete changes in specific parameters associated with existing guidance—such as changes in origination fees, loan limits, or reinsurance percentages—rather than wholly new requirements. Accordingly, institutions wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. The Department is particularly interested in comments on possible administrative burdens related to these system or process changes.

Assumptions, Limitations, and Data Sources

Because these final regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, cost estimates provided above reflect a pre-statutory baseline in which the HERA and other statutory changes implemented in these regulations do not exist. Costs have been quantified for five years, as over time this has been a typical period between reauthorizations of the HEA.

In developing these estimates, a wide range of data sources were used, including the NSLDS, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, 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 changes in Federal student aid payments as a result of these final regulations. Expenditures are classified as transfers to postsecondary students; savings are classified as transfers from program participants (lenders, guaranty agencies).

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$976.
From Whom To Whom?	Federal Government to Postsecondary Students; Student Aid Program Participants to Federal Government.

Paperwork Reduction Act of 1995

We received one comment on the Paperwork Reduction Act portion of the interim final regulations. The commenter disagreed with the Paperwork Reduction Act information collection burden analysis for the changes we made to § 682.604. These changes implemented section 8010 of the HERA to end the exemption from multiple disbursement requirements for eligible foreign institutions. Our analysis stated that, in the vast majority of cases, the lender or guaranty agency is already required to disburse a FFEL Program Loan in two installments as a regular business practice and that this change would produce no additional burden for foreign schools.

The commenter stated that, while the requirement to disburse a loan in two installments is a regular business practice at U.S. institutions, prior to publication of the interim final regulations, it had not been true for foreign schools. The commenter stated that disbursing a loan in two installments is a new burden for foreign schools and for lenders and guaranty agencies that provide loans to their American students enrolled in foreign schools.

As a result of public comment, we have reconsidered and recognized the burden associated with the elimination of the exemption of single disbursement of FFEL Loans to students attending foreign institutions. While there is additional burden associated with making two disbursements of a FFEL Loan for a student attending a foreign institution, the burden is primarily at the institution in the processing of an additional disbursement. Since the normal business process for a lender or guaranty agency includes making multiple disbursements of FFEL Loans, there is no significant additional burden to the lender or guaranty agency. These additional activities will increase burden hours by 20,000. A Paperwork Reduction Act submission for OMB Control Number 1845–0020, which covers the burden in § 682.604, has been submitted to OMB for approval.

As noted in the interim final rules, the Department has been working with its major stakeholders to develop the forms and applications necessary to implement many of the provisions of this rulemaking activity. The Department plans to separately publish the required **Federal Register** notices for the collections of information associated with the following sections: active duty military (§§ 674.34, 682.210, and 685.204), obtaining and repaying a loan (§ 682.102), identity theft (§ 682.402), and consolidation (§ 685.220).

OMB has already approved the increased burden for the information collection requirements associated with the teacher loan forgiveness provisions (§§ 682.215 and 685.217) under OMB Control Number 1845–0059.

Assessment of Education Impact

Based on our own 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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List of Subjects

34 CFR Part 668

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

34 CFR Part 673

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

34 CFR Parts 682 and 685

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

Dated: October 25, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 673, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

■ 2. Section 668.2 is amended in paragraph (b) in the first sentence of the definition of *Federal PLUS program* by adding the word ''dependent'' immediately after the words ''encourages the making of loans to parents of''.

■ 3. Section 668.10 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 668.10 Direct assessment programs.

(a) * * *

(3) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours.

* * * * *

§ 668.22 [Amended]

■ 4. Section 668.22 is amended by:

■ A. In paragraph (a)(5)(iii)(E), removing the words ''electronically or''.

■ B. In paragraph (h)(3)(ii)(B), removing the word ''A'' and adding, in its place, the words ''With respect to any grant program, a''.

■ C. In paragraph (h)(5)(iii), removing the word ''ended'' and adding, in its place, the word ''occurred''.

■ 5. Section 668.35 is amended by:

■ A. In paragraph (e)(2), removing the word ''or''.

■ B. In paragraph (e)(3), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; or''.

■ C. Adding a new paragraph (e)(4).

The addition reads as follows:

§ 668.35 Student debts under the HEA and to the U.S.

* * * * *

(e) * * *

(4) The overpayment is an amount that a student is not required to return under the requirements of § 668.22(h)(3)(ii)(B).

* * * * *

§ 668.164 [Amended]

■ 6. Section 668.164 is amended in paragraph (g)(2)(i) by adding the word ''parent'' immediately before the word ''PLUS''.

■ 7. Section 668.165 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(2) Except in the case of a post-withdrawal disbursement made in accordance with 34 CFR 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student, or parent of—

* * * * *

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 8. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 673.5 [Amended]

■ 9. Section 673.5 is amended in paragraph (c)(1)(ix) by removing the word ''and'' immediately before the number ''1607'' and adding the words '', and Section 903 of Public Law 96–342 (Educational Assistance Pilot Program)'' at the end of the paragraph.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

§ 682.101 [Amended]

■ 11. Section 682.101 is amended in paragraph (c) by removing the words '', or married couples each of whom have eligible loans under these programs'', in the third sentence.

§ 682.201 [Amended]

■ 12. Section 682.201 is amended by:

■ A. In paragraph (b)(3), adding the words ''or under the Federal Direct Subsidized Stafford/Ford Loan Program and Federal Direct Unsubsidized Stafford/Ford Loan Program, as applicable'' immediately after the words ''Unsubsidized Stafford Loan Program''.

■ B. In paragraph (c)(1)(vii), removing the parentheticals ''(b)(2)(ii)'' and adding, in their place, the parentheticals ''(c)(2)(ii)''.

■ C. In paragraph (c)(3), removing the parentheticals ''(b)(1)'' and adding, in their place, the parentheticals ''(c)(1)''.

■ D. In paragraph (d)(1)(i)(A)(*3*), removing the reference to ''§ 682.209(a)(7)(viii)'' and adding, in its place, a reference to ''§ 682.209(a)(6)(iii)''.

■ E. In paragraph (d)(2), removing the word ''responsible'' and adding, in its place, the word ''ineligible''.

§ 682.204 [Amended]

■ 13. Section 682.204 is amended by:

■ A. In paragraph (a)(1)(i), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

■ B. In paragraph (a)(1)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

■ C. In paragraph (a)(1)(iii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ D. In paragraph (a)(2)(i), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ E. In paragraph (a)(2)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ F. In paragraph (d)(5), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ G. In paragraph (d)(6)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ H. In paragraph (d)(6)(iii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

§ 682.206 [Amended]

■ 14. Section 682.206 is amended in paragraph (e)(3) by adding the words '', based on an application received prior to July 1, 2006,'' immediately before the word ''may''.
■ 15. Section 682.207 is amended by:
■ A. In paragraph (b)(1)(v)(C)(*1*), adding the words ''with the home institution'' after the words ''verification of the student's enrollment''.
■ B. Revising paragraph (b)(2)(i)(A)(*2*).
■ C. Revising paragraph (b)(2)(i)(A)(*3*).
■ D. In paragraph (b)(2)(i)(B), adding the word '', facsimile'' after the word ''telephone''.
■ E. In paragraph (b)(2)(iv) introductory text, removing the parentheticals ''(b)(1)(v)(D)(*1*)'' and adding, in their place, the parentheticals ''(b)(1)(v)(D)''.

The revisions read as follows:

§ 682.207 Due diligence in disbursing a loan.

(b) * * *
(2) * * *
(i) * * *
(A) * * *
* * * * *

(*2*) For a new student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify the student's admission to the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(*3*) For a continuing student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify that the student is still enrolled at the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.
* * * * *

§ 682.209 [Amended]

■ 16. Section 682.209 is amended by:
■ A. In paragraph (a)(6)(v)(B), removing the parentheticals ''(a)(7)(viii)(C)'' and adding, in their place, the parentheticals ''(a)(6)(viii)(C)''.
■ B. In paragraph (a)(7)(iv), removing the parentheticals ''(a)(8)(iii)'' and adding, in their place, the parentheticals, ''(a)(7)(iii)''.
■ 17. Section 682.211 is amended by:
■ A. In paragraph (f)(6), removing the words ''in the case of parent a PLUS Loan'' and adding, in their place, the words ''on whose behalf a parent has borrowed a PLUS Loan''.
■ B. Revising paragraph (h)(3).

The revision reads as follows:

§ 682.211 Forbearance.

* * * * *
(h) * * *

(3) *Forbearance agreement.* After the lender determines the borrower's or endorser's eligibility, and the lender and the borrower or endorser agree to the terms of the forbearance granted under this section, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file.
* * * * *

§ 682.215 [Amended]

■ 18. Section 682.215 is amended by:
■ A. In paragraph (c)(3)(ii)(B), removing the word ''either''.
■ B. In paragraph (c)(4)(ii)(B), removing the word ''either''.
■ 19. Section 682.302 is amended by:
■ A. Revising paragraph (c)(1)(iii)(B)(*4*).
■ B. In paragraph (c)(1)(iii)(B)(*5*), removing the cross-reference ''§ 682.202(a)(2)(v)'' and adding, in its place, the cross-reference ''§ 682.202(a)(2)(v)(A)''.
■ C. Removing paragraph (c)(5).
■ D. Revising paragraph (f) introductory text.
■ E. Revising paragraph (f)(2).

The revision reads as follows:

§ 682.302 Payment of Special Allowance on FFEL loans.

* * * * *
(c) * * *
(1) * * *
(iii) * * *
(B) * * *

(*4*) A Federal PLUS Loan made on or after July 1, 1998 and prior to October 1, 1998, except that no special allowance shall be paid any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(f) For purposes of this section—
* * * * *

(2) The date on which an obligation is considered to be ''originally issued'' is determined under § 682.302(f)(2)(i) or (ii), as applicable.

(i) An obligation issued to obtain funds to make loans, or to purchase a legal or equitable interest in loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date issued.

(ii) A tax-exempt obligation that refunds, or is one of a series of tax-exempt refundings with respect to a tax-exempt obligation described in § 682.302(f)(2)(i), is considered to be originally issued on the date on which the obligation described in § 682.302(f)(2)(i) was issued.
* * * * *

■ 20. Section 682.305 is amended by:
■ A. In paragraph (c)(2)(v), adding the words ''or a nonprofit organization'' after the words ''governmental entity'' and removing the words ''and 34 CFR, part 80, appendix G'' and adding in their place the words ''and 34 CFR §§ 74.26 and 80.26, as applicable''.
■ B. Revising paragraph (c)(2)(vi).
■ C. In paragraph (d)(1), by adding the word ''rate'' immediately after the word ''interest'' the third time it appears in the sentence.

The revisions read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of loan origination fees.

* * * * *
(c) * * *
(2) * * *

(vi) With regard to a school that makes or originates loans, the audit requirements are in 34 CFR § 682.601(a)(7).
* * * * *

§ 682.401 [Amended]

■ 21. Section 682.401 is amended in paragraph (b)(27)(iv) by removing the parentheticals ''(b)(27)(ii)(D)'' and adding, in their place, the parentheticals ''(b)(27)(v)''.

§ 682.402 [Amended]

■ 22. Section 682.402 is amended by:
■ A. In paragraph (e), in the paragraph heading, removing the word ''borrower'' and adding, in its place, the word ''borrow''.
■ B. In paragraph (e)(1)(iii)(A), adding the word ''not'' immediately before the word ''pay''.
■ 23. Section 682.405 is amended by adding new paragraphs (b)(1)(iii) through (vii) to read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *
(b) * * *

(1) * * *

(iii) For the purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50 or the monthly accrued interest on the loan, whichever is greater. However, $50 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(*1*) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all FFEL loans held by other holders.

(iv) The agency must include any payment made under § 682.401(b)(4) in determining whether the nine out of ten payments required under paragraph (b)(1) of this section have been made.

(v) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii)(C) of this section.

(vi) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (*e.g.*, credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(vii) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

* * * * *

§ 682.408 [Amended]

■ 24. Section 682.408 is amended in paragraph (c) by adding, after the words ''§ 682.207(b)(1)(ii) and (iv)'', the phrase '', or Stafford Loan proceeds to a borrower in accordance with the requirements of § 682.207(b)(1)(i) and (ii),''.

■ 25. Section 682.601 is amended by:

■ A. Revising paragraph (a)(7).

■ B. Revising paragraph (a)(8).

■ C. In paragraph (a)(9), adding the words ''one or more FFEL program'' before the word ''loans''.

The revisions read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(7) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(i) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with § 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A–133, Appendix B, Compliance Supplement) is not audited as a ''Major Program'' (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a Major Program.

(ii) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with § 682.305(c)(2)(i) through (iii);

(8) Must use any proceeds from special allowance payments and interest payments from borrowers, interest subsidy payments, and any proceeds from the sale or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized under the HEA) for need-based grants; and

* * * * *

§ 682.604 [Amended]

■ 26. Section 682.604 is amended in the introductory text to paragraph (h) by removing the words ''or SLS'' and adding, in their place, '', SLS or PLUS''.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

§ 685.102 [Amended]

■ 28. Section 685.102 is amended in the definition of *Estimated Financial Assistance* in paragraph (b)(1)(ix) by removing the parentheticals ''(2)(iii)'' and adding, in their place, the parentheticals ''(2)(iv)''.

§ 685.200 [Amended]

■ 29. Section 685.200(b) is amended by:

■ A. Removing the paragraph (b)(1) designation.

■ B. Redesignating paragraphs (b)(1)(i), (ii), (iii), (iv), and (v) as paragraphs (b)(1), (2), (3), (4), and (5), respectively.

■ C. In newly redesignated paragraph (b)(4), removing the words ''and Stafford Ford/Loan Program; and'' and adding, in their place, the words ''Stafford/Ford Loan Program or under the Federal Subsidized and Unsubsidized Stafford Loan Program, as applicable; and''.

■ D. In newly redesignated paragraph (b)(5), removing the words ''does not have an adverse credit history in accordance with'' and adding, in their place, the words ''meets the requirements of''.

§ 685.203 [Amended]

■ 30. Section 685.203 is amended by:

■ A. In paragraph (a)(1)(i), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ B. In paragraph (a)(1)(ii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ C. In paragraph (a)(1)(iii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ D. In paragraph (a)(2)(i), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ E. In paragraph (a)(2)(ii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ F. In paragraph (c)(2)(v), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ G. In paragraph (c)(2)(vi)(B), removing the word ''originated'' and adding, in its place, the word ''disbursed''.
■ H. In paragraph (c)(2)(vii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.
■ 31. Section 685.208 is amended as follows:
■ A. By adding a new paragraph (a)(2)(iv).
■ B. By revising paragraph (g)(3).
■ C. By revising paragraph (h)(2).

§ 685.208 Repayment plans.

(a) * * *

(2) * * *

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

(g) * * *

(3) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(h) * * *

(2) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

* * * * *

§ 685.217 [Amended]

■ 32. Section 685.217 is amended by:
■ A. In paragraph (c)(3)(ii)(B), removing the word ''either''.
■ B. In paragraph (c)(4)(ii)(B), removing the word ''either''.
■ 33. Section 685.220 is amended by:
■ A. In paragraph (c)(1), removing the words ''and to'' immediately before the words ''Federal Consolidation Loans'' and adding, in their place, the words ''and attributable to the portion of'', and by removing the words ''if they are'' and adding, in their place, the words ''that is''.
■ B. In paragraph (d)(1) introductory text, removing the words '', at the time the borrower applies for such a loan,''.
■ C. In paragraph (d)(1)(i) introductory text, removing the word ''The'' and adding, in its place, the words ''At the time the borrower applies for a Direct Consolidation Loan, the''.
■ D. In paragraph (d)(1)(ii) introductory text, adding the words ''At the time the borrower applies for the Direct Consolidation Loan,'' immediately before the words ''on the loans being consolidated,''.
■ E. In paragraph (d)(1)(ii)(A), removing the words ''six-month''.
■ F. In paragraph (d)(1)(ii)(D), removing the words ''Except as provided in paragraph (d)(4) of this section, in'' and adding, in their place, the word ''In''.
■ G. Redesignating paragraphs (d)(1)(iii) and (d)(1)(iv) as paragraphs (d)(1)(iv) and (d)(1)(v), respectively.
■ H. Adding a new paragraph (d)(1)(iii).
■ I. Removing paragraph (d)(4).
■ J. Redesignating paragraph (h)(1) as paragraph (h)(1)(i).
■ K. Redesignating paragraph (h)(2) as paragraph (h)(1)(ii).
■ L. Redesignating paragraph (h)(3) as paragraph (h)(2).

The addition reads as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(iii) On the loans being consolidated, the borrower is—

(A) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(B) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

* * * * *

■ 34. Section 685.300 is amended by revising paragraph (b)(8) to read as follows:

§ 685.300 Agreements between and eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that—

(i) A student may not receive a Direct Subsidized Loan and/or a Direct Unsubsidized Loan under part D of the Act and a subsidized and/or unsubsidized Federal Stafford Loan under part B of the Act for the same period of enrollment;

(ii) A graduate or professional student or a parent borrowing for the same dependent student may not receive a Direct PLUS Loan under part D of the Act and a Federal PLUS Loan under part B of the Act for the same period of enrollment;

* * * * *

§ 685.303 [Amended]

■ 35. Section 685.303(e) introductory text is amended by removing the words ''or Direct Unsubsidized Loan'' and adding, in their place, the words '', Direct Unsubsidized, or Direct PLUS Loan''.

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