

The Department is requesting a revision of the current information collection. The proposed Federal Family Education Loan (FFEL) Program regulations revise the current regulations for program administration as described.

First, the proposed regulations indicate the regulatory changes made in the provisions related to forbearance, reasonable and affordable loan rehabilitation, and administrative wage garnishment along with the associated changes in burden.

Additionally, we describe a series of proposed regulatory changes that removes unneeded FFEL regulations that are no longer required as a result of the Student Aid and Fiscal Responsibility (SAFRA) Act that was included in the Health Care and Reconciliation Act of 2010 (HCERA), which as of July 1, 2010, terminated the authority for lenders to make new loans under the FFEL program.

Both of these circumstances require a change in the current burden hours.

#### Establishing average burden hours

Considerable burden reduction was achieved by the elimination of the regulations associated with the end of the authorization to make new FFEL program loans. Unlike other newly proposed regulations where the resultant proposed regulation would either increase or decrease burden as a result of the change in regulation, this expansive effort to eliminate the unneeded regulations includes more wholesale changes being proposed to 34 CFR 682. As a result, the entire history of burden associated with OMB 1845-0020 was examined. While the burden assessments for OMB 1845-0020 stretch back over 13 years, the necessary level of detail does not exist to disaggregate the currently approved amount of burden in this collection into its corresponding subsections of 34 CFR 682.

The specific number of respondents from the affected entities is unavailable; therefore we are projecting the number of respondents and responses, as well as projecting the proportion of the burden hours for each of the affected entities based upon the number of borrowers per affected entity.

Therefore, a new methodology to calculate burden is required. We are able to establish that there are 38 subsections of 34 CFR 682 that have burden under OMB 1845-0020. We have divided the total of the currently approved burden hours of 12,352,197 hours by the 38 affected subsections which on average yields 325,058 hours per affected subsection.

We estimate that of the currently approved 25,347,555 respondents spread across 38 subsections of 34 CFR 682 that have burden in OMB 1845-0020, there is an average of 667,041 respondents per subsection (25,347,555 divided by 38).

We estimated the number of responses using the same basis for our estimation of respondents. We estimate that of the currently approved 25,347,555 responses spread across 38 subsections of 34 CFR 682 that have burden in OMB 1845-0020, there is an average of 667,401 responses per subsection (25,347,555 divided by 38).

#### Sections 682.211 – Forbearance

The proposed regulations amend the current FFELP regulations to authorize a lender to grant forbearance to a borrower or endorser who is in default on a loan, but prior to default claim payment, based on the borrower's or endorser's oral request. The proposed regulations provide that a forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser (as required under the current regulations), or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations define "affirmation" for this purpose to be an acknowledgment of the loan by the borrower or endorser in a legally binding manner that can take the form of: 1) a new signed repayment agreement or schedule, or another form of signed agreement to repay the debt (as under current regulations), or 2) an oral acknowledgment and agreement to repay the debt that is documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or 3) a payment made on the loan by the borrower or endorser.

The proposed regulations also specify that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation, the lender must orally review with the borrower the terms and conditions of the forbearance, and that the lender must send the borrower or endorser a notice that confirms the terms of the

forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt within 30 days of that agreement. The proposed regulations require the lender to retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file.

The proposed changes would increase the burden assessment under OMB Control Number 1845-0020.

Respondents: 43,229

Responses: 43,229

Hours: 7,349

#### Section 682.405 - Loan rehabilitation agreement.

The proposed regulations would add new §682.405(b)(1)(iii) to provide that the guaranty agency would base the determination of reasonable and affordable rehabilitation payment amounts on information provided by the borrower on a form approved by the Secretary, and, if requested, supporting documentation provided by the borrower.

Proposed §682.405(b)(1)(iii)(A) would provide that the guaranty agency will consider the borrower's and, if applicable, the borrower's spouse's current disposable income in determining a reasonable and affordable rehabilitation payment. Under proposed § 682.405(b)(1)(iii)(A), spousal income would not be considered if the spouse does not contribute to the borrower's household income.

Proposed § 682.405(b)(1)(iii)(B) would provide that, in determining the reasonable and affordable payment amount, the guaranty agency will consider the borrower's family size, as defined in §682.215(a)(3).

Under proposed § 682.405(b)(1)(v), the guaranty agency would provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment amount. The written rehabilitation agreement would include the rehabilitation payment amount, a prominent statement that the borrower may object orally or in writing to the payment amount, and the method and timeframe for raising an objection to the payment amount. The written rehabilitation agreement would provide an explanation of any other terms and conditions applicable to the required series of payments. The guaranty agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement would inform the borrower of the effects of having a loan rehabilitated. For FFEL Program loans, the written repayment agreement would inform the borrower of the amount of any unpaid collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible FFEL lender.

Proposed § 682.405(b)(1)(vi) would provide that the borrower's rehabilitation payment amount would be recalculated if the borrower objects to the payment amount contained in the written repayment agreement that the guaranty agency would send to the borrower under proposed § 682.405(b)(1)(vi).

Under § 682.405(b)(1)(vii) a borrower who objects to the monthly repayment amount contained in the written repayment agreement would provide guaranty agency the documentation needed to recalculate a monthly payment amount under the IBR formula. The guaranty agency would recalculate the rehabilitation payment amount using the formula for calculating a monthly payment amount under the IBR plan in §682.215(b)(1) of the FFEL regulations. If the recalculated amount using the IBR plan formula is less than \$5, the borrower's recalculated monthly rehabilitation payment would be \$5. If the borrower does not provide the required documentation to the guaranty agency, the guaranty agency would not proceed with the rehabilitation process.

Proposed §682.405(b)(1)(vi) would require a guaranty agency to recalculate the borrower's rehabilitation payment amount if the borrower objects to the payment amount contained in the written repayment agreement that the guaranty agency sent to the borrower.

Proposed §682.405(b)(1)(vii) would require a borrower who objects to the monthly repayment amount contained in the written repayment agreement to provide the guaranty agency the documentation needed to calculate a monthly payment amount under the income-based repayment plan formula. If the borrower does not provide this information to the guaranty agency no rehabilitation agreement would exist with the borrower, and the guaranty agency would not proceed with the rehabilitation.

Proposed §682.405(b)(1)(ix) and 685.211(f)(7) would require the Secretary or the guaranty agency, upon the borrower's request, to adjust the borrower's monthly rehabilitation payment due to a change in the borrower's financial circumstances. The borrower would be required to provide documentation supporting the request.

Collectively, the proposed changes in §682.405(a) and (b) would increase burden OMB Control Number 1845-0020.

The substantive changes would be in addition to the previous burden assessment under OMB Control Number 1845-0020.

Respondents: 101,714

Responses: 101,714

Hours: 27,822

Section 682.410 - Fiscal, administrative, and enforcement requirements.

The proposed regulations would add a new §682.410(b)(9)(i)(T) to the regulations, which specifies the functions that may be performed by a third-party servicer or collection contractor employed by the guaranty agency for services needed in the administrative wage garnishment (AWG) process.

The proposed regulations would make clear that the guaranty agency may not delegate to any third party the decision to order withholding of an individual borrower's wages, and must create and retain records to demonstrate that each order issued has been individually authorized by an appropriate official of the guaranty agency. The proposed regulations would also specify the manner by which a withholding order may be sent to employers and the permissible activities that may be performed by a third-party servicer or collection contractor employed by the guaranty agency with respect to withholding orders. Only an authorized official of the guaranty agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues by either including the official's signature on the order, or, by retaining in the agency's records, the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued and the debt for which the order was issued.

The proposed regulations would also replace §682.410(b)(9)(i)(L) of the FFEL regulations with §682.410(b)(9)(i)(H) to provide that if a borrower's written request for a hearing is received by the guaranty agency after the 30<sup>th</sup> day following the date of the garnishment notice and a decision is not rendered within 60 days following receipt of the borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61<sup>st</sup> day after the hearing request was received until a hearing is provided and a decision is rendered.

If a borrower does not request a hearing within the 30-day time limit, the guaranty agency must go forward with the AWG. However, if a borrower does eventually request a hearing, a guaranty agency is still required to provide one in sufficient time to have a decision issued within 60 days of the request. The Department added a provision specifying that if this hearing is not provided and a decision issued within 60 days, then the agency must suspend the AWG order beginning on the 61<sup>st</sup> day until a decision is issued.

The proposed regulations would add new paragraph in §682.410(b)(9)(i)(J) and would provide for the manner by which the hearing is administered and certain provisions relating to bringing forth additional evidence and continuances. Specifically, the proposed regulations would require that the hearing be conducted as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and require maintenance of a summary record of any hearing. The proposed regulations would also allow the borrower to request a continuance to submit additional evidence.

Proposed §682.410(b)(9)(i)(Q) would clarify that a borrower who wishes to object to AWG on the basis that he or she is not subject to garnishment because of recent reemployment after involuntary separation, bears the burden of raising and proving that claim.

Collectively, the proposed changes in §682.410 would increase burden in OMB Control Number 1845-0020.

Respondents: 977                      Responses: 977                      Hours: 489

## TOTALS

Responses	145,920
Respondents	145,920
Burden Hours	35,660