DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

[Docket ID ED–2008–OPE–0009]

RIN 1840–AC94

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

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act of 2007 (CCRAA).

DATES: We must receive your comments on or before August 15, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Nikki Harris, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Nikki Harris, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006–8502. Telephone: (202) 219–7050 or via the Internet at: *Nikki.Harris@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled ''*Negotiated Rulemaking*,'' significant public participation, through three public hearings and four negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). Therefore, in accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before August 15, 2008. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the intended regulation and feasible alternatives, and to make a reasoned determination that the benefits of this intended regulation justify its costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8033, 1990 K Street, NW., Washington, DC between the hours of 8:30 a.m. and 4 p.m. Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2008/index2008.html.*

On October 22, 2007,the Department published a notice in the **Federal Register** (72 FR 59494) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the new TEACH Grant Program (TEACH Grant Committee). A second committee would address Federal student loans (Loans Committee). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The Loans Committee met to develop proposed regulations during the months of January 2008, February 2008, March 2008, and April 2008. This NPRM resulted from the work of the Loans Committee and proposes regulations relating to the administration of the Federal student loan programs.

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of three public hearings held on:

• November 2, 2007, at the Sheraton New Orleans, New Orleans, Louisiana.

• November 16, 2007, at the U.S. Department of Education in Washington, DC.

• November 29, 2007, at the Manchester Grand Hyatt San Diego, San Diego, California.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/reg/hearulemaking/2008/index2008.html.*

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, the Loans Committee reached agreement on its protocols and proposed agenda. These protocols provided that the non-Federal negotiators would participate in the negotiated rulemaking process based on each Committee member's experience and expertise and would not represent specific constituencies.

The Loans Committee included the following members:

• Luke Swarthout, U.S. Public Interest Research Group, and Rebecca Thompson (alternate), United States Student Association.

• Carrie Steere-Salazar, Association of American Medical Colleges, and Radhika Miller (alternate), National Lawyers Guild Partnership for Civil Justice.

• Deanne Loonin, National Consumer Law Center, and Lauren Saunders (alternate), National Consumer Law Center.

• Allison Jones, California State University, and Anna Griswold (alternate), Pennsylvania State University.

• Eileen O'Leary, National Direct Student Loan Coalition, and Kathleen Koch (alternate), Seattle University School of Law.

• George Chin, University Director of Student Financial Assistance, The City University of New York, and John Curtice (alternate), The State University of New York System Administration.

• Mark Pelesh, Corinthian Colleges, and Tammy Halligan, (alternate), Career College Association.

• Tom Levandowski, Wachovia Corporation, and Walter Balmas (alternate), MyRichUncle Student Loans.

• Scott Giles, Vermont Student Assistance Corporation, and Phil Van Horn (alternate), Wyoming Student Loan Corporation.

• Gene Hutchins, New Jersey Higher Education Student Assistance Authority, and Dick George (alternate), Great Lakes Higher Education Guaranty Corporation.

• Wanda Hall, Edfinancial Services, and Robert Sommer (alternate), Sallie Mae.

• Martin Damian, Windham Professionals, and Carl Perry (alternate), Progressive Financial Services, Inc.

• Anne Gross, National Association of College and University Business Officers, and Larry Zaglaniczny (alternate), National Association of Student Financial Aid Administrators.

• Dan Madzelan, U.S. Department of Education.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During its meetings, the Loans Committee reviewed and discussed drafts of proposed regulations. At the final meeting in April 2008, the Loans Committee reached consensus on all of the proposed regulations in this document. More information on the work of the Loans Committee can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html.*

Following the Loans Committee's final meeting the proposed regulations were reviewed by the Department of Defense (DOD) and the Department of Health and Human Services (HHS). Based on the comments we received from DOD and HHS, we made technical changes to the proposed regulations.

HHS pointed out that the correct technical term for the specific set of dollar figures published annually by HHS for use in determining eligibility for certain programs is ''the poverty guidelines'' rather than ''the poverty line guidelines.'' The poverty guidelines are used to determine whether a title IV borrower is eligible for an economic hardship deferment or has a partial financial hardship under the IBR plan. HHS recommended that we replace all references to ''the poverty line guidelines'' in the proposed regulations with the term ''poverty guidelines.'' We agreed and made this change.

DOD questioned one provision in the proposed definition of ''active duty'' for purposes of determining a borrower's eligibility for the post-active duty student deferment in the Federal Perkins, FFEL, and Direct Loan programs. DOD indicated that the reference to ''section 101(19) of title 32'' in proposed 34 CFR 674.34(i)(2)(iv), 682.210(u)(2)(iv), and 685.204(f)(2)(iv) was incorrect because State active duty, which is not Federally funded, would not be covered under section 101(19) of title 32, but under State law and regulations. To correct the reference and to accomplish the goal of the proposed provision, which was to exclude from deferment eligibility those individuals who are employed in permanent full-time positions with the National Guard unless they are subject to a further call-up to active State duty, DOD recommended language that we have substantively incorporated in the relevant sections of the proposed regulations.

These proposed regulations would implement a new loan repayment plan and a new loan forgiveness program created by the CCRAA. In addition, these proposed regulations would implement several other provisions enacted by the CCRAA that relate to the title IV HEA loan programs.

The CCRAA added a new income-based repayment (IBR) plan to the FFEL and Direct Loan Programs. Under the IBR plan, effective July 1, 2009, a borrower who has a partial financial hardship is eligible to make reduced monthly payments on his or her loan for a period of up to 25 years, after which the Secretary cancels any remaining principal and accrued interest on the loan, provided the borrower meets certain requirements.

The CCRAA also added the new Public Service Loan Forgiveness program to the Direct Loan Program. Under this loan forgiveness program, the Secretary forgives any remaining principal and accrued interest on a borrower's eligible Direct Loan if, after October 1, 2007, the borrower makes 120 monthly payments on the loan while the borrower is employed full-time in a public service job. The CCRAA provides that a FFEL borrower may obtain a Direct Consolidation Loan if the borrower wants to participate in the Public Service Loan Forgiveness Program, but this provision does not take effect until July 1, 2008.

This NPRM also addresses changes made by the CCRAA to military and economic hardship deferments, special allowance payments, and not-for-profit holders under the FFEL Program.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss substantive issues under the sections of the

proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Economic Hardship Deferment (§§ 674.34 and 682.210)

Statute: Section 435(o) of the HEA defines economic hardship as when a borrower is working full-time and is earning an amount that does not exceed either an amount equal to 150 percent of the poverty guideline applicable to the borrower's family size or the Federal minimum wage rate. The poverty guidelines are issued annually by the Department of Health and Human Services (HHS). The statute also authorizes the Secretary to establish other criteria by regulation. Any regulatory criteria added by the Secretary would have to consider a borrower's income and debt-to-income ratio as primary factors.

Current Regulations: The regulations governing the economic hardship deferment in the FFEL, Direct Loan, and Federal Perkins Loan programs were amended on November 1, 2007 (72 FR 61960) to incorporate the change in the eligibility standard enacted as part of the CCRAA. The CCRAA changed the applicable standard used to determine eligibility for the deferment from ''an amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act'' to ''an amount equal to 150 percent of the poverty line applicable to the borrower's family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act.'' The current regulations also include criteria under which a borrower could qualify for the deferment if the borrower is: (1) Working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of either the Federal minimum wage rate or the poverty guideline, or (2) working less than full-time and has a monthly income that does not exceed twice the Federal minimum wage rate or poverty guideline and, after deducting the borrower's Federal education debt burden, the remaining amount of that income does not exceed the Federal minimum wage rate or the poverty guideline.

Proposed Regulations: The Secretary proposes to amend the regulations governing eligibility for an economic hardship deferment to include a definition of family size. The proposed definition of family size would be the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, if the children receive more than half their support from the borrower. A borrower's family size could include other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals reside with the borrower and receive more than half of their support from the borrower, and if they will continue to receive that support from the borrower. The kinds of support provided by the borrower to the individual could include money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

The proposed regulations also would remove the reference to ''section 673(2) of the Community Service Block Grant Act'' and substitute, in its place, a reference to ''the Department of Health and Human Services guidelines pursuant to 42 U.S.C. 9902(2).'' The regulations also would specify that if a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline for the relevant family size used for the 48 contiguous States.

Finally, the proposed regulations would eliminate both the economic hardship criterion for a borrower who is working full-time and has a 20/220 debt-to-income ratio, and the corresponding debt-to-income ratio criterion for a borrower who is working part-time.

Reasons: A definition of family size is not currently part of the poverty guidelines. A definition is now necessary because the applicable poverty guideline used to determine whether a borrower has an economic hardship is based on the borrower's family size at the time the borrower requests, or applies for renewed eligibility for, the deferment. A standard definition is needed to ensure that borrowers are treated equitably in determining economic hardship. Because they share the same statutory basis in section 435(o) of the HEA, the proposed definition of family size for the purpose of determining eligibility for an economic hardship deferment is also the definition proposed for use to determine a borrower's partial economic hardship under the new IBR plan.

The proposed regulations would clarify that HHS is the source of the poverty guidelines and provide guidance on the treatment of a borrower who is not residing in a ''State'' identified in the poverty guidelines. In particular, the proposed regulations address situations in which a borrower resides in a foreign country when the borrower applies for the deferment. Some non-Federal negotiators indicated that they believed that the Department's prior operational guidance on economic hardship deferments directed them to use the poverty guideline for the State in which the borrower last resided. However, the borrower's last residence in that State might be many years in the past and irrelevant to the borrower's current circumstances. Moreover, such an approach could result in using a more favorable poverty guideline for borrowers who formerly resided in either Alaska or Hawaii than borrowers who formerly lived in one of the 48 contiguous States. In light of these factors, the negotiators decided that using the contiguous 48-State poverty guideline for borrowers living outside the United States would be more equitable for similarly situated borrowers.

The CCRAA eliminated the provision in section 435(o) of the HEA under which a borrower could be considered to have an economic hardship if the borrower was working full-time and had a Federal educational debt burden that equaled or exceeded 20 percent of the borrower's adjusted gross income (AGI). Previously, borrowers were eligible for an economic hardship deferment if they could demonstrate that they were working full-time and had a Federal education debt burden that equaled or exceeded 20 percent of the borrower's income, and that the borrower's income minus the borrower's Federal education debt burden would leave the borrower with an available income that was less than 220 percent of the Federal minimum wage rate or an amount equal to 150 percent of the poverty guideline based on the borrower's family size. A comparable debt-to-income ratio provision applied to borrowers working less than full-time. This has been referred to as ''the 20/220 rule.''

The Department retained the 20/220 rule in regulations published on November 1, 2007, so that borrowers could continue to qualify for an economic hardship deferment on this basis until the newly created IBR plan became operational on July 1, 2009. Consequently, a borrower who is in an economic hardship deferment under either one of the debt-to-income provisions (applicable to borrowers working full-time or on a less than full-time basis), with a deferment period that starts prior to July 1, 2009, will continue in that status for one year after the start date of that deferment period. However, no subsequent economic hardship deferment will be available under that

criterion for any deferment request made on or after July 1, 2009.

Some non-Federal negotiators asked the Department to retain the 20/220 rule. They argued that the elimination of the rule would have an adverse impact on borrowers (i.e., some borrowers who would not have to make payments under the 20/220 rule would now be required to make payments), particularly on medical and other health professionals who have a large amount of student loan debt and will spend a number of years in low paying medical internships and residencies as part of their training. The Department believes, however, that Congress intended to eliminate the 20/220 rule and replace it with the new IBR plan that is meant to provide assistance to this kind of borrower during periods of limited earnings. Both the definition of partial financial hardship for purposes of the IBR plan and the criteria for economic hardship deferment are based on the definition of economic hardship in section 435(o) of the HEA. The Congress expanded the potential applicability of a partial financial hardship, which supports IBR eligibility, by changing the applicable poverty guideline for eligibility in section 435(o)(1)(A)(ii), while at the same time deleting section 435(o)(1)(B), which specifically supported the 20/220 criteria for the economic hardship deferment. The Department's action to retain the 20/220 rule in the November 1, 2007, regulations was designed to ease the transition for affected borrowers until the IBR plan is implemented.

Although the IBR plan, unlike a deferment, does not permit a borrower to postpone payments, it does provide for reduced payments because borrowers who initially select the IBR plan must have a partial financial hardship. A borrower has a partial financial hardship if the annual amount due on all eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, is more than 15 percent of the difference between the borrower's most recent, documented AGI and 150 percent of the poverty guideline for the borrower's family size. Some borrowers in the IBR plan will not be required to make monthly loan payments. Other borrowers will have monthly payment amounts that are much less than those normally calculated under a standard repayment plan.

Military Service Deferment and Post-Active Duty Student Deferment (§§ 674.34, 682.210, 682.211, and 685.204)

Statute: The Higher Education Reconciliation Act of 2005 (HERA) established a new military service deferment in the FFEL, Direct Loan, and Federal Perkins Loan programs for military personnel and members of the National Guard who are called to active duty military service during a war or other military operation or national emergency. The CCRAA expanded the military service deferment to allow all eligible borrowers to receive the deferment on all their outstanding title IV loans, rather than just on loans that were first disbursed on or after July 1, 2001, and eliminated the maximum three-year limit on the deferment. The CCRAA also extended the military service deferment for an additional 180 days following the date the borrower is demobilized from the qualifying active duty service. The expansion of the military deferment is for all periods of active duty service that include October 1, 2007, or begin on or after that date.

The CCRAA also created a new post-active duty student deferment in the FFEL, Direct Loan, and Federal Perkins Loan programs for members of the National Guard or Armed Forces Reserve, and members of the Armed Forces who are in a retired status who are called or ordered to active duty service. The deferment is available for up to 13 months following the borrower's demobilization from active duty service. To be eligible, the borrower must have been called to active duty service while the borrower was enrolled in a program of instruction at an eligible institution or within six months of having been enrolled. The deferment expires if the borrower reenrolls in school. Active duty for the purpose of this deferment is defined in the CCRAA as active duty as the term is used in 10 U.S.C. section 101(d)(1); however, it does not include active duty for attendance at a service school or for training duty, and it does include active duty of members of the National Guard (''active State duty''). Consistent with the date of enactment of the CCRAA, the deferment is available to an eligible borrower who was serving on active duty on October 1, 2007, or was called to active duty service on or after that date.

Current Regulations: The FFEL, Direct Loan, and Federal Perkins Loan program regulations governing the military service deferment were amended on November 1, 2007, to reflect the expansion of deferment benefits resulting from the CCRAA. The references in prior regulations to a three-year time limit and its applicability only to loans first disbursed on or after July 1, 2001 were removed from the regulations, and the new 180-day post-active duty deferment was added. A provision for the new 13-month post-active duty student deferment and the statutory definition of the term ''active duty'' for purposes of this deferment were also added to the regulations.

Proposed Regulations: The proposed regulations would clarify the current regulations, incorporate guidance on the deferments that was provided to program participants in Dear Colleague Letter GEN–08–01 (issued January 8, 2008), and would provide relief to borrowers who may qualify for a post-active duty student deferment after demobilization, but do not qualify for the military service deferment during their active State duty service.

The proposed regulations would clarify that the expansion of the military service deferment to include a 180-day post demobilization period, and the post-active duty student deferment would be available to borrowers who were serving on active duty on October 1, 2007, or who are called to active duty on or after that date. The proposed regulations in §§ 674.34(i)(3), 682.210(u)(3), and 685.204(f)(1)(ii) would also clarify that a borrower's eligibility for the post-active duty student deferment terminates only if the borrower returns to enrolled student status on at least a half-time basis, and that a borrower returning from active duty who is in the grace period on a loan is not required to waive the grace period to use the 13-month post-active duty student deferment. The proposed regulations in §§ 674.34(i)(2)(i) and (ii), 682.210(u)(2)(i) and (ii), and 685.204(f)(2)(i) and (ii) would also clarify that active State duty for members of the National Guard includes, for purposes of the post-active duty student deferment, both active duty under which a Governor activates members of the National Guard under State statute or policy and the activities are paid for with State funds, and active duty under which a Governor is authorized, with the approval of the President or U.S. Secretary of Defense to activate members of the National Guard and the activities are paid for with Federal funds. The proposed regulations in §§ 674.34(i)(2)(iv), 682.210(u)(2)(iv), and 685.204(f)(2)(iv) would also specify that active duty for this purpose does not include a borrower who is serving in a full-time, permanent position of employment with the National Guard,

unless the borrower is reassigned as part of a call-up to active duty service. At the recommendation of DOD, the incorrect reference to section 101(19) of title 32, U.S.C. has been removed, as discussed elsewhere in this preamble.

The proposed regulations also incorporate the Department's earlier guidance (Dear Colleague Letter GEN–08–01) on implementation of the CCRAA military-related deferment provisions. As provided in that guidance, the proposed regulations in §§ 674.34(h)(7), 682.210(t)(9), and 685.204(e)(7) would authorize loan holders to grant a military service deferment to an otherwise eligible borrower for an initial deferment period not to exceed 12 months from the date the borrower's qualifying active duty service begins based on a request from either the borrower or the borrower's representative. Consistent with that earlier guidance, although supporting documentation is not required for this initial 12-month deferment period, it is required for any subsequent deferment period. Additionally, §§ 674.34(i)(4), 682.210(u)(4), and 685.214(f)(4) of the proposed regulations would specify that if a borrower is eligible for both the 180-day military service deferment following the borrower's demobilization, and the 13-month post-active duty student deferment, the borrower's eligibility for those separate deferments runs concurrently.

Finally, a change has been proposed in the FFEL program regulations in § 682.211(h) governing mandatory forbearance that would require the loan holder to grant forbearance to a borrower who is called to active State duty for more than a 30-day period and who does not qualify for a military service deferment during the active State duty service period, but who qualifies for the post-active duty student deferment.

Reasons: The negotiators agreed that the regulations governing the two military service-related deferments required clarifying amendments, and that the Department's earlier guidance should be included in the proposed regulations to ease program administration. That guidance addressed the October 1, 2007, effective date for the new benefits, and clarified that a borrower who received a military service deferment that began prior to October 1, 2007, would qualify for the extra 180 days of deferment if the borrower's period of military service included the October 1, 2007, date.

Non-federal negotiators noted that the post-active duty student deferment does not relieve a borrower of the obligation to make payments on a student loan during the borrower's period of active duty military service. A borrower in an in-school status would be required to make payments after the initial grace period elapses. A borrower receiving an in-school deferment would be required to make payments on a student loan after the borrower drops below half-time status at the school and reports for active duty service.

The non-federal negotiators recommended that the Department provide for a mandatory forbearance to cover this gap, so that borrowers who will qualify for a post-active duty student deferment, but are no longer in an in-school status or qualify for an in-school deferment, will not be obligated to make loan payments during the period of active duty service.

The Department agreed with the non-federal negotiators. The proposed revisions to § 682.211(h) provide for the mandatory forbearance to begin after the initial grace period elapses, for borrowers in an in-school status, and to begin after the borrower ceases enrollment, for borrowers who are in an in-school deferment at the time of the call to active duty.

Some of the non-Federal negotiators expressed concern over the confusion that may result for borrowers and those assisting them with respect to the different eligibility requirements for the two different military service-related deferments. The negotiators discussed different approaches to providing information on the various forms of relief available to title IV student loan borrowers called to active duty military service, such as charts and brochures, but determined that these efforts were operational in nature and would not affect the regulations.

Income-Based Repayment Plan

Definitions (§§ 682.215(a) and 685.221(a))

Partial Financial Hardship

Statute: Section 493C(a)(3) of the HEA provides that a borrower has a partial financial hardship if the annual amount due on all of the borrower's eligible FFEL and Direct Loans (as calculated under a standard repayment plan based on a 10-year repayment period) exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size. If a married borrower files a separate Federal income tax return, section 493C(d) of the HEA provides that only the borrower's income and student debt are used in determining the amount of the borrower's payment under the IBR plan.

Proposed Regulations: Proposed §§ 682.215(a)(4) and 685.221(a)(4) would incorporate the statutory definition of the term partial financial hardship. The proposed regulations would also incorporate the terms and definitions of ''AGI,'' ''family size,'' and ''poverty guideline'' from existing § 682.210, which addresses how to determine whether a borrower qualifies for an economic hardship deferment.

Under the proposed regulations, AGI would mean the income reported by the borrower to the Internal Revenue Service (IRS). For a married borrower filing jointly, AGI would include both the borrower's and spouse's income. If a married borrower files separately, AGI would include only the borrower's income.

Under the proposed regulations, family size would include the borrower, the borrower's spouse, and the borrower's children if the children receive more than half their support from the borrower. Other individuals could be included in family size if, at the time the borrower certifies family size, those other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support for the year the borrower certifies family size. Support would include money, gifts and payment of other expenses, including college costs.

Under the proposed regulations, poverty income would be the income categorized by State and family size in the poverty guidelines.

Finally, under the proposed regulations, the term ''eligible loan'' would refer to any outstanding FFEL or Direct Loan made to a borrower, except for a FFEL or Direct PLUS Loan made to a parent borrower or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

Reasons: For consistency and ease of administering the title IV loan programs, the definitions of AGI, family size, and poverty guidelines would be the same in all sections of the regulations to which they apply. While supporting this approach, some non-Federal negotiators suggested that AGI or the total amount of eligible loans should be adjusted in cases when a married borrower and his or her spouse both have outstanding loans, file a joint Federal tax return, and both qualify for IBR. In these cases, the combined monthly student loan payments of the borrower and the spouse could exceed the 15 percent payment threshold under the IBR plan. The Department acknowledged this possibility but noted that the negotiators' suggested change would be

inconsistent with the HEA. First, section 493C(d) of the HEA, as amended by Public Law 110–153, specifically provides for considering the individual AGI of one married borrower only when the borrower and the borrower's spouse file separate Federal tax returns. Second, section 493C(a)(3)(A) of the HEA requires that only the borrower's eligible loans, not the spouse's, are considered in determining whether the borrower has a partial financial hardship.

Income-Based Payment Amount (§§ 682.215(b) and 685.221(b))

Statute: Under section 493C(b)(1) of the HEA, the monthly payment amount of a borrower who qualifies for a partial financial hardship is determined by calculating 15 percent of the amount obtained by subtracting 150 percent of the borrower's poverty guideline from the borrower's AGI, and then dividing this amount by 12 (an example of this calculation is provided in Appendix A of this preamble).

Proposed Regulations: If a borrower's eligible loans are held by more than one loan holder, proposed §§ 682.215(b)(1) and 685.221(b)(2) would require each loan holder to adjust the amount of a borrower's calculated monthly payment. The borrower's adjusted monthly payment would be determined by multiplying the calculated monthly payment amount by the percentage of the total outstanding principal amount of eligible loans held by that holder (see the example in Appendix A of this preamble).

If the borrower's calculated monthly payment is less than $5.00, the borrower would not be required to make a payment. If the borrower's calculated monthly payment is between $5.00 and $10.00, the borrower would be required to make a $10.00 payment.

Reasons: Without the proposed adjustment by each loan holder of the borrower's eligible loans, a borrower who selects the IBR plan with two or more loan holders would have to make total monthly payments in excess of the statutory maximum.

With regard to minimum monthly payment amounts, the Department initially proposed to adopt the $5.00 minimum monthly payment provision used in the Direct Loan Program income contingent repayment (ICR) plan. Under the ICR plan, a minimum payment of $5.00 is required whenever the borrower's calculated monthly payment is greater than zero but equal to or less than $5.00. The non-Federal negotiators argued that, because a borrower's calculated monthly payment amount under the IBR plan could be zero, a minimum $5.00 payment (or any payment amount over zero) would violate the 15 percent payment threshold. As a result, the Department agreed to allow zero payment amounts, which will require no collection action on the part of the loan holder. However, as an administrative matter, taking into consideration the cost of processing payments, the non-Federal negotiators agreed to the Department's proposal to establish a minimum payment of $10.00 whenever the borrower's calculated monthly payment is between $5.00 and $10.00. This represents a compromise approach for dealing with *de minimis* payment amounts for borrowers with low income and high debt. On one hand, it satisfies the concern of the non-Federal negotiators that a borrower with a calculated payment at or near zero should not have to make any payments. On the other hand, setting the minimum payment at $10 (an amount agreed to by the Loans Committee as part of the negotiations) mitigates the financial risk to FFEL loan holders, servicers, and the Department that the marginal cost of processing the payment is not more than the payment amount.

Borrower Payments (§§ 682.215(b), 682.215(c), 685.221(b), 685.221(c), and 682.300(b))

Statute: Section 493C(b)(2) of the HEA specifies that monthly loan payments made under the IBR plan are applied first toward interest due on the loan, next toward any fees, and then to the principal balance of the loan. In addition, section 493C(b)(3) provides that if the borrower's monthly payment does not cover the accrued interest on a subsidized loan, the Secretary will pay the interest for up to three years after the date the borrower elects IBR. The three-year period does not include any period during which a borrower receives an economic hardship deferment.

Proposed Regulations: Proposed §§ 682.215(c) and 685.221(c) would incorporate the provisions from the HEA regarding the order in which IBR payments are to be applied by a loan holder.

Proposed §§ 682.215(b)(4) and 682.300(b)(1)(iv) and (b)(2)(x) would provide that, if the borrower's payment is insufficient to pay the accrued interest on a loan, the Secretary pays the accrued interest on a subsidized Stafford Loan, or on the subsidized portion of a Consolidation Loan, to the FFEL loan holder for up to three consecutive years from the date that the borrower initially began repayment on each loan under the IBR plan. In the Direct Loan Program, proposed § 685.221(b)(3) would provide that the Secretary will not charge interest to borrowers during this three-year period. In the proposed regulations for both the FFEL and Direct Loan Programs, the three-year period would not include any period during which a borrower receives an economic hardship deferment.

Reasons: Some of the non-Federal negotiators believed that the statutory provisions regarding the three-year interest subsidy period were ambiguous in three respects. First, these negotiators believed that the date that a borrower elects the IBR plan could be interpreted to mean the date the borrower notified the holder, or any other date up to the date the borrower makes a payment under the IBR plan. Second, they believed it was unclear whether the three-year period was applicable to each of the borrower's loans or was the cumulative period of the borrower's eligibility for the subsidy payments. The proposed regulations would address both of these issues by providing that the three-year period starts on the date the borrower initially begins repayment on each loan under the IBR plan.

Third, some of the non-Federal negotiators did not agree with the Department's determination that the three-year period is a consecutive period. The Department notes that section 493C(b)(3)(A) of the HEA specifically states that the subsidy period starts on the date the borrower selects the IBR plan and provides for only one type of interruption or break in the three-year period—economic hardship deferments. Therefore, once the subsidy period begins, it runs continuously for three years as long as the borrower's monthly payment under the IBR plan is not sufficient to pay the accrued interest on the borrower's loan.

Changes in Payment Amount (§§ 682.215(d) and 685.221(d))

Statute: For a borrower who no longer has a partial financial hardship, or who no longer wants to continue making income-based payments under the IBR plan, section 493C(b)(6) of the HEA provides that the maximum monthly payment the borrower may be required to make must not exceed the monthly amount calculated for the borrower under a 10-year repayment period when the borrower first entered IBR. Under either of these circumstances, the repayment period may exceed 10 years. Section 493C(b)(8) of the HEA also provides that a borrower who is paying under the IBR plan may elect, at any time, to terminate payment under the IBR plan and repay under the standard repayment plan.

Proposed Regulations: Proposed §§ 682.215(d) and 685.221(d) would provide for the recalculation of the borrower's monthly payment if the borrower no longer has a partial financial hardship, chooses to stop making income-based payments, or elects to leave the IBR plan entirely.

The proposed regulations provide that if a borrower no longer has a partial financial hardship or wishes to stop making income-based payments, but remains within the IBR plan, the maximum monthly amount that the borrower would be required to repay must be recalculated. The recalculated amount the borrower would be required to repay is the amount the borrower would have paid under the standard repayment plan with a 10-year repayment period based on the eligible loans that were outstanding at the time the borrower began repayment under the IBR plan. The proposed regulations would also provide that the borrower's total repayment period based on the recalculated payment amount may exceed 10 years.

If a borrower no longer wishes to pay under the IBR plan, the proposed regulations would require the borrower to pay under the standard repayment plan for the remaining term available based on the borrower's initial standard repayment disclosure. The loan holder would recalculate the borrower's monthly payment based on the time remaining under the maximum 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the IBR plan. For a Consolidation Loan borrower who elects to leave the IBR plan, the applicable repayment period would be the repayment period remaining based on the total amount of that loan and the balance on other student loans that were outstanding at the time the borrower discontinued paying under the IBR plan.

Reasons: The proposed regulations would reflect the statutory provisions in section 493C(b)(6) of the HEA, which require a loan holder to recalculate the borrower's monthly payment if the borrower no longer has a partial financial hardship, chooses to stop making income-based payments, or leaves the IBR plan entirely. The proposed regulations would also provide for a different calculation of monthly payment amounts for Consolidation Loans when a borrower elects to leave the IBR plan and must repay under a standard repayment plan. The Department is proposing this distinction because a Consolidation Loan can have a repayment period of up to 30 years. The negotiators agreed with this approach.

Eligibility Documentation and Verification (§§ 682.215(e) and 685.221(e))

Statute: Section 493C(c) of the HEA requires the Department to establish procedures for annually determining whether a borrower qualifies for IBR. These procedures include verifying the borrower's annual income and the annual amount due on the borrower's loans, and other procedures necessary to effectively implement the IBR plan.

Proposed Regulations: Under proposed §§ 682.215(e) and 685.221(e), the loan holder would determine whether a borrower has a partial financial hardship to qualify for the IBR plan for the year the borrower initially selects the plan and for each subsequent year that the borrower remains in the plan.

To make this determination, the loan holder would require the borrower to (1) provide written consent to the disclosure of AGI and other tax return information by the IRS to the loan holder, and (2) annually certify family size. The borrower would provide consent by signing a consent form and returning it to the loan holder. If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the proposed regulations would allow the loan holder to use other documentation provided by the borrower (for example, a current pay stub or unemployment benefits letter) to verify income. If the borrower fails to respond to a loan holder's request to certify family size for a particular year, the loan holder must assume a family size of one for that year.

The proposed regulations would require the loan holder to place the borrower in a standard repayment plan if the borrower selects the IBR plan, but fails to provide the required written consent necessary for the loan holder to determine whether the borrower initially qualifies for the IBR plan. The proposed regulations also designate the recalculated monthly payment option as discussed under the ''Changes in Payment Amount'' for a borrower who no longer has a partial financial hardship or a borrower who fails to renew the required written consent for income verification (or withdraws that consent) but does not select another repayment plan.

Reasons: If a borrower initially selects the IBR plan but fails to provide the necessary consent for securing income information, the loan holder would place the borrower into the standard repayment plan. This approach is consistent with the current FFEL and Direct Loan regulations that provide for a borrower to be placed on the standard repayment plan if the borrower selects the income-sensitive repayment plan in the FFEL Program or the ICR plan in the Direct Loan Program, but then fails to provide the information or authorization that is necessary for the borrower to enter that repayment plan.

The non-Federal negotiators proposed that borrowers should be allowed to provide consent for the disclosure of income information for multiple years, rather than annually. Although the Department does not object to this proposal, the forms used to provide consent are IRS-produced forms. The Department has no authority to specify the period of time an IRS consent form may cover, so the proposed regulations do not specify the duration of the consent form.

The Department initially proposed that a loan holder would automatically change the borrower's repayment option if the borrower fails to provide annual information on family size. The non-Federal negotiators recommended that the Department instead allow the borrower's family size to default to one in these cases to allow the loan holder to recalculate the borrower's eligibility for a partial financial hardship. If the borrower no longer qualifies for a partial financial hardship based on a family size of one, the loan holder would recalculate the borrower's monthly payment as discussed under ''Changes in Payment Amount.'' The Department agreed with this proposal.

Loan Forgiveness (§§ 682.215(f) and 685.221(f))

Statute: Section 493C(b)(7) of the HEA provides that the Department will repay or cancel the outstanding balance and accrued interest on an eligible loan for a borrower who participates in the IBR plan for a period not to exceed 25 years and meets certain requirements or makes qualifying payments during the maximum 25-year period.

Proposed Regulations: Sections 682.215(f) and 685.221(f) of the proposed regulations would: (1) Establish the conditions that a borrower must satisfy to qualify for loan forgiveness under the IBR plan; (2) identify the beginning date of the 25-year period for determining whether a borrower made qualifying payments or received economic hardship deferments during that period; and (3) provide that the Department will repay or cancel the outstanding balance and accrued interest on an eligible loan at the end of the 25-year period.

Under the proposed regulations, a borrower would qualify for loan forgiveness after 25 years as long as the borrower participated in the IBR plan at any time during that period and satisfied at least one of the following conditions:

- Made reduced monthly payments on the loan under a partial financial hardship, including a payment of zero dollars.
- Made reduced monthly payments on the loan after the borrower no longer had a partial financial hardship or stopped making income-based payments.
- Made monthly payments under any repayment plan that were not less than the amount required under a FFEL or Direct Loan standard repayment plan with a 10-year repayment period based on when the borrower initially entered repayment.
- Made monthly payments under the FFEL standard repayment plan based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the IBR plan.
- Paid a Direct Loan under the income contingent repayment (ICR) plan.
- Received an economic hardship deferment on an eligible loan.

Except for borrowers who repaid Direct Loans under the ICR plan, under proposed § 685.221(f)(3)(ii) the beginning date of the 25-year period would be no earlier than July 1, 2009, which is the effective date for the implementation of the IBR plan. In general, after the borrower selects the IBR plan, the loan holder would establish the beginning date by determining when the borrower made a qualifying payment or received an economic hardship deferment on the loan on or after July 1, 2009. However, under § 685.221(f)(3)(i) of the proposed regulations, for a borrower who made payments under the Direct Loan Program ICR plan, the beginning date would be the date the borrower made a payment on the loan under that plan any time after July 1, 1994. For borrowers who consolidate their eligible loans, the 25-year period would restart from the date of the consolidation.

Under proposed §§ 682.215(f)(4) and 685.221(f)(4), the Secretary would pay (for a FFEL loan) or forgive (for a Direct Loan) the outstanding balance and accrued interest on the eligible loan after the guaranty agency or the Department determines that the borrower satisfies the loan forgiveness requirements.

Reasons: With regard to establishing the beginning date of the 25-year period, some of the non-Federal negotiators suggested that qualifying payments made by an otherwise eligible borrower at any time before July 1, 2009 (i.e., retroactive payments), should count toward the 25-year forgiveness period. The Department considered, but did not adopt this suggestion, for three reasons. First, the statute does not support a general rule that payments made before the effective date of the IBR plan (July 1, 2009) should count toward the forgiveness period. Second, allowing retroactive payments would substantially increase costs to the Federal government and the taxpayers (for more detail see the discussion under the Regulatory Impact Analysis section of the preamble). Third, it would be administratively difficult, if not impossible in some cases, for a loan holder to determine the beginning date of the 25-year period before July 1, 2009, because there was no expectation of loan forgiveness, and therefore, no basis to require loan holders to track and maintain data on individual loan payments in the manner needed to readily identify qualifying payments under the IBR plan.

The Department was able, however, to reach a compromise on this issue with the non-Federal negotiators for a group of borrowers that the negotiators acknowledged as the most vulnerable and needy. The Department agreed to count retroactive payments made by borrowers in the Direct Loan Program ICR plan for two reasons. First, there are no material administrative costs because the Department has readily available payment data for ICR borrowers. Second, we do not believe there would be any additional program costs because borrowers repaying their loans under the Direct Loan Program ICR plan are already on a path to loan forgiveness.

The proposed conditions and qualifying payments that a borrower must satisfy for loan forgiveness would parallel the statutory requirements. Some non-Federal negotiators encouraged the Department to consider establishing a loan forgiveness period of less than 25 years. The negotiators suggested a 20-year period, stating that the 25-year period is only a statutory maximum. The Department could not adopt this suggestion for two reasons. First, reducing the forgiveness period to 20 years would increase Federal costs (for more detail see the discussion under the Regulatory Impact Analysis section of the preamble). Second, as a policy matter, the Department believes that the loan forgiveness periods for IBR and ICR should be the same for these borrowers because they are in similar circumstances.

Loan Forgiveness Processing and Payment (§ 682.215(g))

Statute: The HEA does not address procedures for IBR loan forgiveness processing and payment with respect to FFEL loan holders and guaranty agencies.

Proposed Regulations: Proposed § 682.215(g) would establish deadlines for FFEL loan holders and guaranty agencies for processing loan forgiveness claims. A loan holder would be required to request payment from a guaranty agency no later than 60 days from the date the holder determines that a borrower qualifies for loan forgiveness. Within 45 days of receiving the lender's request, the guaranty agency would need to determine if the borrower satisfies the forgiveness requirements and notify the lender of that determination. Finally, the proposed regulations would require the loan holder to notify the borrower of the guaranty agency's determination within 30 days.

In addition, the proposed regulations would address how the loan holder and guaranty agency resolve any differences between the outstanding balance of the borrower's eligible loans and the forgiveness amount, and how a borrower is treated if it is determined that the borrower is not eligible for loan forgiveness. Although the Department has not included comparable processes in the Direct Loan Program regulations, the Department intends to follow the same deadline and notification provisions specified in these proposed FFEL regulations.

Reasons: The non-Federal negotiators supported including these processing requirements in the proposed regulations to provide for the timely processing of IBR forgiveness claims. The deadlines for lenders and guaranty agencies to process IBR loan forgiveness claims are consistent with the deadlines used for other loan discharges.

Special Allowance Payments for Income-based Loans (§ 682.302(a))

Statute: For loans in repayment under the IBR plan, section 493C(b)(9) of the HEA requires that the special allowance payment to a lender be calculated separately on the principal balance of the loan and on any unpaid accrued interest. In addition, section 493C(b)(3)(B) provides that accrued interest may be capitalized only when the borrower: (1) Elects to leave the IBR plan; or (2) begins making payments of not less than the amount the borrower would have made under a standard 10-year repayment plan based on the outstanding amount of the borrower's

loan at the time the borrower began repayment under the IBR plan.

Current Regulations: Current § 682.302(a) provides for special allowance payments by the Secretary to loan holders in the FFEL Program. A special allowance payment is generally described as a subsidy payment made to a FFEL lender under a formula provided in the HEA that ensures that the lender will receive a market-based rate on a FFEL loan regardless of what the student or parent borrower pays.

Proposed Regulations: Proposed § 682.302(a) would add to the current regulations a separate calculation of the special allowance rate for the unpaid accrued interest on a loan in repayment under the IBR plan. The current provisions for calculating the special allowance payment rate on the unpaid principal balance of a loan (including capitalized interest) would remain unchanged. However, the proposed regulations would require that, when computing the special allowance rate on the unpaid accrued interest for a borrower in IBR, the applicable interest rate used in the calculation would be zero.

Reasons: The Department initially proposed calculating the special allowance payment to be paid on the unpaid accrued interest for a borrower in the IBR plan in the same way that the special allowance payment would be calculated for other loans. Some of the non-Federal negotiators argued, however, that since accrued unpaid interest on an income-based loan can only be capitalized under limited circumstances, or may never be capitalized, the yield on the principal balance of an income-based loan would be less than the yield that would otherwise be obtained on the same type of loan when accrued unpaid interest is capitalized and becomes part of the loan principal. Moreover, the yield on the income-based loan would have been further reduced under the Department's initial approach (the special allowance rate for the unpaid accrued interest would be reduced by the applicable interest rate of the loan). The Department agreed.

Income Contingent Repayment Plan—Maximum Repayment Period (§ 685.209(c))

Statute: Section 455(e) of the HEA specifies the periods that count toward the maximum 25-year repayment period under the ICR plan in the Direct Loan Program.

Current Regulations: Current § 685.209(c) establishes the repayment period for Direct Loans under the ICR plan.

Proposed Regulations: Proposed § 685.209(c)(4) would parallel the provisions in the HEA by counting the following periods toward the maximum 25-year repayment requirement:

- Periods in which the borrower makes payments under the ICR plan on loans that are not in default.
- Periods in which the borrower makes reduced monthly payments under the IBR plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments.
- Periods in which the borrower made monthly payments under the standard repayment plan after leaving the IBR plan.
- Periods in which the borrower makes payments under the standard repayment plan.
- Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan.
- Periods of economic hardship deferment after October 1, 2007.

In addition to the provisions reflecting the statutory requirements, the Department proposes to maintain the current provision in § 685.209(c)(4)(ii)(A)(*2*). This current provision applies to borrowers who entered repayment before October 1, 2007, with repayment periods of not more than 12 years and who made payments under either of the extended repayment plans, or, for Direct Consolidation Loan borrowers, made payments under the standard repayment plan. October 1, 2007, is the effective date of the maximum ICR repayment period provisions in the CCRAA.

Reasons: The proposed changes are necessary to reflect the statutory requirements. The Department proposes to maintain the current provisions to allow the periods that now count toward the 25-year repayment timeframe to continue to be counted for these borrowers.

Eligible Not-For-Profit Holder Definition (§ 682.302)

Statute: Section 435(p) of the HEA, added by the CCRAA, included the new term ''eligible not-for-profit holder'' to describe a State or non-profit entity that may receive a higher special allowance payment (SAP) rate on loans it holds than other lenders. Regulations issued by the Department on November 1, 2007 (72 FR 61960), incorporated the statutory definition of ''eligible not-for-profit holder'' from the CCRAA into the regulations. However, Congress made further changes to that definition in Public Law 110–109, the Third Higher Education Extension Act of 2007, enacted October 31, 2007. Public Law 110–109 made a significant change to the definition by removing the requirement that only an entity that is an eligible lender in its own right under section 435(d) of the HEA could qualify as an eligible not-for-profit holder. Public Law 110–109 made conforming changes to other parts of section 435(p) of the HEA that excluded from eligible not-for-profit holder status any State or non-profit entity that was not the sole owner of the beneficial interest in the loan or that was itself owned or controlled by a for-profit entity.

Current Regulations: Current § 682.302(f) does not reflect the changes made by Public Law 110–109. In addition, the regulations do not address how an entity that claims to qualify as an eligible not-for-profit holder demonstrates eligibility to the Department or the standards the Department will use to determine whether the entity qualifies for that status.

Proposed Regulations: The proposed regulations would amend § 682.302(f)(3) to incorporate the changes made by Public Law 110–109 that removed the requirement that an entity qualified for not-for-profit holder status, either directly or through an eligible lender trustee (ELT), only if the entity was an eligible lender under section 435(d) of the HEA.

The Secretary also proposes to describe, in § 682.302(f)(3)(v), the circumstances in which a State or non-profit entity is deemed to be owned or controlled by a for-profit entity. These circumstances generally are those described in the Department's Dear Colleague Letter FP–07–12, issued December 28, 2007, and which were used by the Department in its initial determination of whether entities qualified for eligible not-for-profit holder status. These circumstances include those in which a for-profit entity either has a sufficient ownership interest, as a member or shareholder of an entity, to control the State or non-profit entity, or employs or appoints a majority of the individuals who serve as trustees of the State or non-profit entity, or who serve on the audit, executive, or compensation committees of the board of the entity. The proposed regulations would deem a trustee or director to be employed or appointed by a for-profit entity if the for-profit entity employs a family member of an individual, unless the Secretary determines that the nature of a family member's employment by the for-profit entity is not the kind that

would likely subject the trustee, director, or the board on which the family member serves to pressures that would affect the integrity of their decisions. The proposed regulations thus would distinguish between family members employed as lower level employees from those employed in more responsible positions.

To identify whether a for-profit entity has the power to control a State or non-profit entity, the proposed regulations would provide for review of whether the for-profit entity controls, by any of various agreements, a sufficient voting percentage of the membership or equity interests of the State or non-profit entity to direct or cause the direction of the management and policies of the State or non-profit entity.

Section 435(p)(2)(C) of the HEA provides that the State or non-profit entity must be the exclusive owner of at least the beneficial interest in a loan and its income. The proposed regulations would define ''beneficial owner'' (including ''beneficial ownership'' and ''owner of a beneficial interest'') in the conventional sense, as the right to receive, possess, use, and sell or otherwise exercise control over a loan and income from the loan. The proposed regulations would recognize and disregard those instances in which this power might be significantly restricted by a security interest granted by the entity in the course of issuing a debt obligation or where the entity has used an ELT to retain ownership of its loans in order to qualify those loans for FFEL Program benefits.

The HEA provides that a trustee that holds loans on behalf of a State or non-profit entity may not be compensated for that function in excess of reasonable and customary fees. The proposed regulations would provide that fees are reasonable and customary if the rate paid by the entity to the trustee does not exceed the rate paid for similar services on similar portfolios of loans of that State or non-profit entity that did not qualify for the higher SAP, or did not exceed an amount determined by using another method requested by the State or non-profit entity that the Secretary considers reliable.

The Secretary also proposes, in § 682.302(f)(3)(x), the list of documents that must be provided to the Secretary by a State or non-profit entity that seeks to demonstrate that it qualifies as an eligible not-for-profit holder. These documents generally are those described in Dear Colleague Letter FP–07–12, and which were used by the Department in its initial determination of whether entities qualified for eligible not-for-profit holder status. The requirements would include submission of a certification signed by the State or non-profit entity's Chief Executive Officer (CEO), as well as a certification or opinion signed by the State or non-profit entity's external legal counsel or the attorney general of the State. Both submissions would be required to include copies of documents that provide the basis for the certification or opinion.

The certification or opinion of the external legal counsel or State attorney general, with supporting documentation, would be required to show that the State or non-profit entity meets one of the four criteria: (1) Is a constituted entity by operation of State law; (2) has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d)(2) of the Internal Revenue Code of 1986 (IRC), has not made the election described under section 150(d)(3) of the IRC, and is incorporated under State law as a not-for-profit organization; (3) is incorporated under State law as a not-for-profit organization or entity described in 150(d)(3) of the IRC; or (4) has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity. The certification of the State or non-profit entity's CEO would be required to state the basis upon which the entity believes it qualifies as an eligible not-for-profit holder for purposes of SAP as a State entity, a 150(d) entity, a 501(c)(3) entity, or a trustee on behalf of a State entity, and that the entity, on September 27, 2007, acted as an eligible lender under section 435(d) of the HEA, other than as a school lender, or was on that date the sole beneficial owner of a loan eligible for SAP under the HEA; is not owned or controlled, in whole or in part, by a for-profit entity; and is the sole beneficial owner of the loan and income from the loan. The HEA expressly requires the entity's status to be determined as of the effective date of the CCRAA, which was September 27, 2007.

Proposed § 682.302(f)(3)(xi) would provide that, to retain continued eligibility as a not-for-profit holder, the State or the not-for-profit entity must submit an annual certification signed by the State or not-for-profit entity's CEO that states that the State or entity has not altered its status since its prior certification or that describes any alterations that have taken place since its prior certification, and, if a non-profit entity, provide copies of its most recent IRS Form 990.

Reasons: The proposed changes are required to conform current regulations to changes in the HEA, and to establish procedures for demonstrating whether an entity qualifies as an eligible not-for-profit holder. In addition, changes were needed to clarify the standards that would be used to determine whether a for-profit entity had ownership or control of the entity or its loans or whether excessive fees were paid to a trustee engaged by the entity.

The changes to the HEA indicated strong Congressional concern that only those entities not controlled by for-profit entities could receive the higher SAP. Control can be exercised directly or indirectly by a for-profit entity. The Department initially proposed to identify specific kinds of conduct by a State or non-profit entity that would indicate that the entity was indirectly controlled by a for-profit entity. One proposed provision would have required the not-for-profit holder to use a survey to determine the market rate for fee-paid services used by the not-for-profit holder to determine whether the particular not-for-profit holder's fee payments were excessive. The Department proposed to view excessive fee payments for services as a possible indication that a for-profit entity receiving fee payments from the not-for-profit entity effectively controlled the not-for-profit holder and was diverting SAP-related benefits through the excessive fee payments. Additionally, the Department proposed that a not-for-profit holder be subject to an ongoing transaction-based analysis of its student loan financing arrangements, again to determine whether payments made by the not-for-profit holder to acquire loans or received by that entity for the sale of its loans exceed the sale price paid or received by other entities in the purchase or sale of similar loans.

The Department determined, after extensive discussions with non-Federal negotiators familiar with not-for-profit loan holders, that a survey of fees would be impractical for a not-for-profit holder to conduct on an ongoing basis, and that market fluctuations affected the cost of services to such an extent that it would be an unreliable indicator of any indirect control by another entity. The Department instead agreed to measure whether fees are excessive by simply comparing the fees a not-for-profit entity pays on its eligible loans to what it pays on its ineligible loans.

Similarly, the same non-Federal negotiators argued that each student loan financing transaction was subject to marketplace volatility and that the nature of the student loan paper subject to sale or acquisition (e.g., default risk,

loan amount, or loan maturity) dictated the associated costs and was therefore an equally unreliable indicator of indirect control of a not-for-profit holder. The Department also consulted with individuals who had knowledge of capital financing and with Department of Treasury staff responsible for oversight of tax-exempt organizations and IRS Form 990, which is filed annually by tax-exempt organizations and reflects the activities and supports the tax-exempt status of the organization. As a result of these discussions, the Department determined that a not-for-profit entity had little incentive to undertake questionable activities related to the receipt of increased special allowance payments that would threaten the tax-exempt status of the organization.

The Department agreed to determine ''control'' of the not-for-profit entity based on a measurement of any for-profit entity's control over the voting rights of the members or shareholders sufficient to dictate the policies and management of the not-for-profit holder, or any for-profit entity's ability to place employees with the not-for-profit holder or secure appointments to the majority of its boards or committees. The Department also believes that the annual recertification process adopted in the proposed regulations, the receipt of the not-for-profit entity's Form 990, and the not-for-profit entity's quarterly lender financial reports to the Department will provide a sufficient baseline against which future activities of a not-for-profit holder can be monitored.

Public Service Loan Forgiveness

Borrower Eligibility for Loan Forgiveness (§ 685.219(c))

Statute: Section 455(m) of the HEA, which governs the William D. Ford Direct Loan Program, was amended to create a new loan forgiveness program for public service employees. Under section 455(m)(1) of the HEA, the Secretary will forgive the outstanding principal balance and accrued interest on a borrower's eligible Direct Loan if the borrower satisfies the following conditions:

- The borrower is not in default on the loan.
- The borrower makes 120 monthly payments on the loan after October 1, 2007, under one or more specified repayment plans.
- The borrower is employed in a public service job at the time that loan forgiveness is requested and granted, and during the period the borrower makes the required 120 monthly payments.

Proposed Regulations: Proposed § 685.219(c)(1) would parallel the statutory requirements and would require the borrower to make 120 separate, full, qualifying monthly payments within 15 days of the scheduled payment due date while the borrower is employed full-time in a public service job to be eligible for this program. The qualifying 120 payments would not have to be consecutive.

To be considered a qualifying payment for loan forgiveness, each payment would have to be made under one or more of the following repayment plans:

- The IBR plan.
- The ICR plan.
- The Direct Loan standard repayment plan.
- Any other repayment plan if the monthly payment amount is not less than the amount the borrower would have paid under the Direct Loan standard repayment plan.

For a payment to count towards the forgiveness period, the borrower would have to have been employed full-time by a public service organization when the payment was made. For borrowers with a contractual or employment period of less than 12 months, qualifying payments would have to have been made each month for all 12 months. This requirement is primarily intended to address teachers who work on an academic year basis. Although teachers on this type of schedule typically work for only 9 months out of the year, they would still be required to make payments on their loans during the summer vacation period. This provision would also apply to other individuals who might work on a similar type of schedule.

The proposed regulations would acknowledge full-time service in an AmeriCorps position as equivalent to employment in a public service job. The proposed regulations also would treat an AmeriCorps education award used for loan repayment of a Direct Loan as qualifying payments to meet the 120-payment requirement. The number of qualifying monthly payments would be calculated for this purpose by dividing the lump sum AmeriCorps education award used for Direct Loan repayment by the amount of the borrower's scheduled monthly payment on the loan.

Reasons: The proposed regulations implement the basic statutory framework for the public service loan forgiveness program.

After much discussion concerning the many types of public service jobs that might qualify a borrower for public service loan forgiveness, the negotiators decided not to define specific job types that might qualify. Instead, they decided it would be clearer and more efficient to define the types of organizations that would qualify as eligible employers for purposes of public service loan forgiveness, and base eligibility for the forgiveness on the type of organization that employs the borrower. Accordingly, the proposed regulations define the term ''public service organization.''

AmeriCorps members receive an award for service performed annually (the Segal Education Award) that can be used to make a lump sum payment on a Federal student loan. The negotiators determined that it would be appropriate and consistent with considering AmeriCorps service as qualifying service for this purpose to allow use of the education award received for that service as a basis for deriving qualifying payments on a Direct Loan that would count towards the 120 monthly payments required for loan forgiveness.

Definitions (§ 685.219(b))

Statute: For purposes of the public service loan forgiveness program, section 455(m)(3)(A) of the HEA defines ''eligible Federal Direct Loan'' as a Direct Stafford Loan, a Direct PLUS Loan, a Direct Unsubsidized Stafford Loan, or a Direct Consolidation Loan.

Section 455(m)(3)(B) of the HEA defines ''public service job'' as: (1) A full-time job in a number of public service occupations and fields; (2) a full-time job at a non-profit organization that satisfies the requirements of section 501(c)(3) of the IRC; or (3) a full-time faculty member at a Tribal college or university as provided in section 316(b) of the HEA, or other faculty teaching in high-needs areas as determined by the Secretary. The statute does not define any other term for the purposes of this program.

Proposed Regulations: Proposed § 685.219(b) would define several terms for purposes of implementing the public service loan forgiveness program. The defined terms would include ''Employee or employed,'' ''Full-time,'' ''Public Interest Law,'' and ''Public Service organization''.

Under the proposed regulations:

- ''Employee or employed'' would mean an individual who is hired and paid by a public service organization.
- ''Full-time'' would mean working in qualifying employment in one or more jobs for the greater of—

(1)(i) An annual average of at least 30 hours per week; or

(ii) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(2) The number of hours the employer considers full-time.

Vacation or leave time provided by the employer would not be considered in determining the average hours worked on an annual or contract basis.

• ''Public interest law'' would refer to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

• ''Public service organization'' would mean:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization that qualifies under section 501(c)(3) of the IRC that is exempt from taxation under section 501(a) of the IRC;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, public child care, public service for individuals with disabilities and the elderly, public health, public education, public library services, school library, or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

Reasons: The proposed definitions are needed to clarify program eligibility and public service work requirements for borrowers who wish to seek public service loan forgiveness.

Some of the non-Federal negotiators proposed definitions that would extend eligibility to individuals in certain jobs (e.g., public defenders) by specifically identifying them in the definition of public interest law, regardless of the nature of their employer or the funding source of their salaries. The negotiators determined that this would be inconsistent with the statutory intent of the definition of the term ''public service job'' and the fact that the legislative history surrounding this section of the CCRAA spoke to recognizing individuals in ''public sector jobs.'' Some of the non-Federal negotiators also argued that the definitions should not limit the eligibility of individuals. In particular, negotiators were concerned that the definition of the term ''full-time'' could make it difficult for teachers to qualify for loan forgiveness.

The term ''Employee or employed'' includes only those individuals who are hired and paid by a public service organization. The term would not include individuals who are contracted to work for the organization or individuals who are hired by a for-profit company that has a contract with the public service organization.

The term ''full-time'' would be defined to recognize the varied full-time work schedules that can exist and the fact that there are no Federal or generally applicable State standards for what constitutes full-time employment. Under the proposed regulations, a borrower would be considered to be employed full-time if the borrower works an annual average of 30 hours per week, an average of 30 hours per week during a contractual or employment period of at least 8 months, or for the number of hours the employer considers full-time. The 30-hour standard is the same full-time standard used for purposes of title IV student loan unemployment deferment eligibility, which requires a borrower to be seeking but unable to find full-time employment of at least 30 hours per week. The definition is broad enough to include individuals who might not work 30 hours each week, but who meet that standard using an annual average of their weekly hours. Consequently, teachers and others with contractual or employment periods that include an acknowledged break period during which they could still be considered employed would meet the definition for full-time.

The term ''Public Interest Law'' limits such services to services that are supported in whole or in part by a government.

The term ''public service organization'' would be derived largely from the statutory definition of ''public service job,'' but is clarified to include certain non-profit organizations that are not qualified under 501(c)(3) of the IRC, but that meet the other statutory requirements and qualify as public service employers under the HEA.

Loan Forgiveness (§ 685.219(d) and (e))

Statute: Section 455(m)(2) of the HEA provides that at the conclusion of the borrower's employment period in a public service job during which the borrower has made 120 qualifying payments under one or more qualifying repayment plans, the Secretary will cancel the outstanding loan principal and accrued interest on the borrower's loan.

Proposed Regulations: Proposed § 685.219(d) and (e) would provide that, after making the qualifying 120 monthly payments, a borrower could request loan forgiveness on a form provided by the Secretary. If the Secretary determines that the borrower qualifies for loan forgiveness, the Secretary would cancel the outstanding principal balance and accrued interest on the borrower's loan and notify the borrower of those actions. If the Secretary determines that the borrower is ineligible for the loan forgiveness, the Secretary would notify the borrower of that determination.

Reasons: Although the proposed regulations implement the statutory requirements, some of the non-Federal negotiators recommended that the Department provide more assistance to a borrower seeking public service loan forgiveness by providing for annual borrower submission and Departmental review and retention of the form provided by the Secretary that would be certified by the borrower's employer. The negotiators believed that this approach would provide timely confirmation to the borrower that all requirements for loan forgiveness (provided the borrower made the qualified monthly payments) were satisfied for that year. The Department considered the negotiators' suggestion, but decided not to adopt this approach for several reasons. First, this suggestion would be operational rather than a regulatory issue. Second, tracking and reviewing documents on an annual basis for potentially thousands of borrowers, many of whom might not remain in public service employment or who may never meet the eligibility requirements for final loan forgiveness, would be a complex and costly administrative process. Finally, as a policy matter, the Department believes it is the borrower's responsibility to gather and maintain the documents to support his or her eligibility for this Federal benefit.

Loan Consolidation (§§ 682.201 and 685.220(d))

Statute: Section 428C(a)(3)(B) and (b)(5) of the HEA provide that a borrower who has a FFEL loan or a FFEL Consolidation Loan, but who wishes to use the public service loan forgiveness program, can obtain a Direct Consolidation Loan. These provisions are effective July 1, 2008.

Current Regulations: Sections 682.201(e) and 685.220(d)(1) provide that a FFEL borrower can obtain a Direct Consolidation Loan only if: (1) The borrower is unable to obtain a FFEL consolidation loan; (2) the borrower is

unable to obtain a FFEL consolidation loan with income sensitive repayment terms acceptable to the borrower; or (3) the borrower's FFEL consolidation loan is submitted to the guaranty agency for default aversion and the borrower wants to obtain a Direct Consolidation Loan to make payments under the ICR plan.

Proposed Regulations: The proposed regulations would amend § 685.220(d) to provide that a FFEL borrower can obtain a Direct Consolidation loan for the purpose of using the public service loan forgiveness program. The Department is proposing a conforming change to § 682.201(e)(5).

Reasons: The proposed regulations implement statutory requirements.

Conforming and Technical Amendments (34 CFR Parts 682, 685)

Statute: The CCRAA made conforming amendments to sections 428C and 455(d) of the HEA to include in these sections certain provisions of the IBR plan, the public service loan forgiveness program, and the ICR plan. The HEA does not specifically address conforming or technical amendments to the Department's regulations that are needed to implement statutory provisions.

Proposed Regulations: The proposed regulations in 34 CFR parts 682 and 685 contain statutory and regulatory conforming and technical amendments.

Reasons: The proposed conforming and technical amendments are needed to reflect and implement statutory provisions or are otherwise needed to harmonize program regulations. These conforming and technical amendments were discussed with the negotiating committee and consensus was reached on the amendments.

Appendix

The following Appendix will not appear in the Code of Federal Regulations:

Appendix A to the Preamble—Partial Financial Hardship

Example: Borrower's AGI = $50,000, Family Size = 5, Borrower's Total Loans = $25,000, Borrower is a resident of Virginia.

Step 1: Determine the poverty guideline associated with the borrower's family size and State of residence. Using the 2008 HHS poverty guidelines, which are available at *http://aspe.hhs.gov/poverty/08poverty.shtml,* the borrower's poverty guideline is $24,800.

Step 2: Multiply the poverty guideline by 150%

$24,800 × 150% = $37,200

Step 3: Subtract the result in Step 2 from AGI.

$50,000 − $37,200 = $12,800

Step 4: Calculate 15% of the amount obtained in Step 3. This is the annual amount of the borrower's income-based payment.

15% × $12,800 = $1,920

Step 5: Determine the annual payment on the total amount of the borrower's loans based on a standard 10-year repayment schedule and the applicable interest rate. In this example, the total amount of the borrower's loans is $25,000, and the interest rate is 6.8%. The annual payment is $3,452.40.

Step 6: Since the annual payment amount in Step 5 ($3,452.40) is greater than the annual income-based payment amount in Step 4 ($1,920), the borrower has a partial financial hardship.

Step 7: To calculate the borrower's monthly income-based payment, divide the result in Step 4 by 12.

$1,920 / 12 = $160

Step 8: If a borrower's loans are held by more than one loan holder, each loan holder needs to adjust the amount of the borrower's monthly income-based payment by multiplying the payment by the percentage of the total amount of loans owed to the holder. In this case, assume the borrower owes $20,000 to Bank A and the remaining $5,000 to Bank B. Bank A's percentage of the borrower's total loan amount is 80% ($20,000 / $25,000). The borrower's monthly income-based payment for Bank A would be 80% × $160, or $128.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the 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 proposed 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. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the CCRAA, that established a new IBR plan for FFEL and Direct Loan borrowers, revised the conditions under which a FFEL or Direct Loan borrower could qualify for a loan deferment due to economic hardship, changed the terms of a number of military service deferments, created a loan forgiveness program in the Direct Loan Program for borrowers who perform public service, and established a separate special allowance rate formula for not-for-profit loan holders.

Proposed Regulation's Discretionary Provisions

The Secretary has limited discretion in implementing the provisions of the CCRAA; in most cases these proposed regulations directly reflect specific statutory requirements. Policy choices were made in a small number of areas. Those areas are listed below, followed by a discussion of the alternatives considered and final policy choices made.

Minimum payment under IBR: The CCRAA does not establish a minimum payment that must be made by a borrower under the IBR plan.

Procedures for Establishing IBR Eligibility: The CCRAA requires the Department to establish procedures for annually determining whether a borrower qualifies for IBR; these procedures must include verifying the borrower's annual income and the annual amount due on the borrower's loans.

Loan Forgiveness Processing and Payment: The CCRAA does not address procedures for IBR loan forgiveness processing and payment with respect to FFEL loan holders and guaranty agencies.

Loan Forgiveness: The CCRAA provides that the Department repays or cancels the outstanding balance and accrued interest on an eligible loan for a borrower who has participated in IBR for a period not to exceed 25 years and

met certain requirements. The statute does not set a minimum for the period of years a borrower can be in IBR and have their loan forgiven.

SAP for Income-Based Loans: For loans being repaid under IBR, the CCRAA requires the special allowance payment to be calculated separately on the principal balance of the loan and on any unpaid accrued interest. The statute does not specify the precise elements that must be included in this calculation.

Economic Hardship Deferment: The CCRAA changed the eligibility criteria under which a borrower may qualify for an economic hardship deferment. In implementing this provision, the Secretary has the discretion to implement additional criteria through regulations.

Definition of Full-Time Employment: The CCRAA requires borrowers to have worked full-time in a qualifying occupation to be eligible for the public service loan forgiveness program; however, the statute does not include a definition of full-time employment.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the CCRAA provisions. These alternatives are also discussed in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Minimum payment under IBR: As noted above, the CCRAA does not set minimum payment levels under the IBR plan. As discussed in the *Reasons* section of the preamble related to this provision, the Department initially proposed to the non-Federal negotiators a provision requiring a $5.00 minimum monthly payment, which is the minimum monthly payment used in the Direct Loan Program ICR plan. Under that plan, a minimum payment of $5.00 is required whenever the borrower's calculated monthly payment is greater than zero but equal to or less than $5.00. Non-Federal negotiators argued that a $5.00 minimum monthly payment (or any payment amount over zero) would violate the statute's 15 percent payment cap. Department negotiators agreed that allowing zero payment amounts would avoid this problem. (The Department determined that this approach had no budgetary impact.) Recognizing that requiring a small payment may be inefficient given the administrative costs, the negotiators agreed, and the Department is therefore proposing to establish a minimum monthly payment of $10.00 whenever the calculated monthly payment is between $5.00 and $10.00.

Procedures for Establishing IBR Eligibility: As discussed in more detail earlier in this preamble, the establishment of IBR eligibility is largely dependent on a borrower providing consent for a loan holder to obtain tax information from the IRS. Non-Federal negotiators recommended that the Department allow borrowers to provide consent to disclose income information for multiple years. The Department agreed to this conceptually, but noted that the forms used for this purpose are IRS forms and that the Department could not regulate the period of time that these consent forms would cover. The Direct Loan ICR form allows consent to be granted for 5 years. The burden associated with completing this form was estimated at 12 minutes. Should IRS adopt a similar form for IBR, loan holders' administrative costs would be significantly reduced. The Department is interested in obtaining any data that could be used to quantify this assessment.

Under the Department's initial proposal at the beginning of the negotiating process, borrowers who failed to provide annual information on family size when they provide their consent would automatically be deemed ineligible to participate in IBR and would be placed in another repayment plan. The non-Federal negotiators recommended, and the Department agreed, that under these circumstances a borrower's family size should be set at one, allowing loan holders to recalculate IBR eligibility for the upcoming year. The approach adopted is consistent with Department practice in administering the ICR plan. However, the Department specifically seeks comment on whether family size should instead default to the number previously certified by the borrower. The Department's initial baseline budget estimates in this area were based on ICR procedures, so the adopted alternative would result in no cost beyond this baseline. The Department did not attempt to calculate the budget impact of the initial proposal; however, we believe the overall impact to the budget would not have been substantially different than this proposed policy, since borrowers would have been assigned to another repayment plan.

Loan Forgiveness Processing and Payment: While the CCRAA did not establish procedures for FFEL loan holders and guaranty agencies to follow in processing loan forgiveness claims and payments for IBR borrowers, the non-Federal negotiators supported including such requirements in the proposed regulations to provide clear guidelines for FFEL loan holders and guaranty agencies administering the IBR plan. Accordingly, the proposed regulations would establish deadlines related to processing of loan forgiveness claims, notifying borrowers of their eligibility for loan forgiveness, and the handling of loan forgiveness payments. These proposed regulations are consistent with current FFEL regulations for other claim payment transactions between loan holders and guaranty agencies and, as such, should not represent a significant additional administrative burden for lenders and guaranty agencies. This new benefit represents a new collection under the Paperwork Reduction Act. A separate 60-day **Federal Register** notice, including burden estimates, will be published to solicit comment on this form once it is developed.

Loan Forgiveness: In the CCRAA, Congress gave the Secretary discretion to set a period not to exceed 25 years during which a borrower must meet certain requirements to qualify for loan forgiveness at the end of such period. The CCRAA did not provide that qualifying payments made prior to July 1, 2009, the date this statutory amendment becomes effective, would count when determining whether a borrower met the relevant requirements during this time period. Some non-Federal negotiators suggested that qualifying payments made by a borrower at any time before July 1, 2009, should count, and that the forgiveness period should be shortened to 20 years. In assessing these suggested alternatives, the Department determined that both would result in substantially increased Federal costs. Reducing the forgiveness period to 20 years, for example, would increase Federal costs by nearly $600 million over 10 years when compared to the baseline established by initial estimates of CCRAA costs, which assumed a forgiveness period of 25 years. Under OMB memorandum M–05–13, any regulatory action that increases the costs to the Federal government must be offset by corresponding cost savings; as no corresponding offsets to these proposals were available, it was not possible to include them in the proposed regulations. In addition, if retroactive payments counted for purposes of meeting the loan forgiveness requirements, loans holders would find it difficult, if not impossible, to determine a beginning date before July 1, 2009, since there was no expectation of loan forgiveness and, therefore, no need to track and maintain

data on individual loan payments in the manner required for IBR purposes. A compromise was ultimately agreed to under which retroactive payments made by borrowers in the ICR plan would be counted when calculating the IBR forgiveness period. This approach avoids both additional Federal costs (since ICR borrowers are already on a path to loan forgiveness) and administrative hurdles, since ICR is available only in the Direct Loan Program, for which the Department has readily available payment data.

SAP for Income-Based Loans: Initially, the Department recommended calculating SAP rates related to accrued interest on loans repaid under the IBR plan in the same manner that is used to calculate rates for a loan's principal balance. Some non-Federal negotiators noted that accrued interest on an IBR loan is only capitalized under limited circumstances. They stated that the lender's yield on the principal balance of these loans would be less than that obtained on a similar loan where accrued interest is capitalized. These negotiators also noted that, under the Department's approach, the lender's yield on a loan in repayment under IBR would be reduced further because the special allowance rate for the unpaid accrued interest would be reduced by the applicable interest rate of the loan. The Department agreed.

Economic Hardship Deferment: Under the CCRAA, economic hardship for the purpose of qualifying for a student loan deferment is defined through an income threshold of 150 percent of the poverty guideline applicable to the borrower's family size. This approach replaced previous criteria under which borrowers were eligible if they earned 100 percent of the poverty guideline for a family of two or if their Federal educational debt burden exceeded 20 percent of their adjusted gross income when adjusted gross income minus debt burden is less than 220 percent of the poverty guideline for a family of two.

Under the HEA, the Secretary has discretion to establish additional eligibility criteria for economic hardship deferments through regulation. The Department is proposing to exercise this discretion to retain the ''20/220'' rule described above for a limited time. First established in regulations published on November 1, 2007, retaining this provision would allow borrowers to continue to qualify for an economic hardship deferment until July 1, 2009, when the newly created IBR plan becomes effective. Borrowers in an economic hardship deferment under the 20/220 provision that began prior to July 1, 2009, would continue in that status for one year from the start of the deferment period. Some of the non-Federal negotiators were concerned that eliminating the rule after July 1, 2009, would adversely affect medical students with large student loans. Data from the National Postsecondary Student Aid Survey indicate 91.2 percent of students beyond their third year of medical school have Federal student loans, with an average outstanding balance of $109,572. Nearly three-quarters of these students have Federal student loan debt of at least $75,000. Under the 20/220 provision, a significant number of these borrowers qualify for an economic hardship deferment during their internship and residency; under this deferment they would make no payments for up to 3 years, with interest paid by the government on Stafford Loans during that period. In the absence of the 20/220 provision, many of these borrowers would not qualify for a deferment and would therefore have to begin repaying their loans while completing their training in relatively low-paying positions. In light of these concerns, negotiators asked the Department to extend the 20/220 provision indefinitely. Such an extension would be prohibitively expensive, with estimated 10-year costs of over $1.1 billion. This estimate, based on a review of Department data on borrower incomes and debt burdens, reflects an estimated 30 percent increase in loan volume qualifying for economic hardship deferment over the amount assumed under baseline estimates. In addition, the Department noted that many high-debt, low-income borrowers under the IBR plan will not be required to make monthly loan payments; others will have monthly payment amounts well below those normally calculated under a standard repayment plan. All borrowers have access to either the IBR or the ICR plan in the Direct Loan Program. The Department does not have borrower-level income data by profession and so cannot estimate aggregate payment amounts under these plans for medical students affected by these regulations. After considering all these factors, the Department declined to use its authority to extend the 20/220 provision beyond July 1, 2009.

Definition of Full-Time Employment: The CCRAA did not include a definition of the term ''full-time,'' when describing the type of employment that would qualify a borrower for the public service loan forgiveness program. Accordingly, we are proposing a definition in this NPRM.

After consulting with the Department of Labor, the Department determined that there is no Federal or generally applicable State standard for what constitutes full-time employment. Subsequent discussions considered the wide variety of full-time work schedules available. Negotiators agreed to a definition under which an individual who works an annual average of 30 hours per week, an average of 30 hours per week during a contractual or employment period of at least 8 months, or for the number of hours the employer considers full-time, would be considered a full-time employee. This proposed definition is consistent with the standard used to determine a borrower's eligibility for a student loan unemployment deferment, which requires a borrower to be seeking but unable to find full-time employment of at least 30 hours per week. The proposed definition also could include employment that is less than 30 hours each week, but which averages 30 hours a week over the course of a year. Under the proposed definition, teachers and other individuals engaged in public service employment who have a contractual or employment period that includes an acknowledged break period during which they remain employed could be considered to be employed full-time.

Benefits

Benefits provided in these regulations include: The provision of more flexible repayment options for student loan borrowers, expanded eligibility for economic hardship deferments for borrowers with large families, additional deferment benefits for military personnel, and the provision of loan forgiveness for public service employees. The Federal taxpayer also benefits from reduced costs related to the reduction of SAP paid to not-for-profit loan holders in the FFEL Program. These benefits all flow directly from statutory changes included in the CCRAA; the Department does not believe these benefits are materially affected by discretionary choices exercised by the Department in developing these regulations. As discussed in greater detail under *Net Budget Impacts,* these proposed provisions result in net costs to the government of $3.3 billion over 2008–2012.

Costs

Because entities affected by these proposed regulations already participate in the title IV, HEA programs, these lenders, guaranty agencies, and schools must already have systems and procedures in place to meet program eligibility requirements. These proposed regulations generally would require

discrete changes in specific parameters associated with existing guidance—such as the use of new criteria to calculate eligibility for deferments or determine SAP—rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the student aid programs have already incurred most of the administrative costs related to implementing these proposed 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. In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions—primarily the provision of an IBR plan—are likely to increase workload for some program participants. (This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of this preamble. These workload analyses indicate an overall increase of 217,297 hours as a result of this NPRM.) Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In this case, however, these costs are not expected to be significant because the Department estimates that participation by FFEL borrowers in the IBR plan will be extremely limited.

The Department is particularly interested in comments on possible administrative burdens related to the proposed regulations. In a number of areas, such as the administrative activities required for FFEL lenders in establishing an IBR option, non-Federal negotiators raised concerns about possible administrative burden associated with provisions included in these proposed regulations. Given the limited data available, however, the Department is particularly interested in comments and supporting information related to possible burden stemming from the proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

IBR and Economic Hardship Deferment Changes. The Department estimates that the proposed regulatory changes related to IBR and economic hardship deferments would result in $4.5 billion in additional Federal costs over fiscal years 2008–2012. ($3.0 billion of these costs are associated with loans made prior to 2008.) These costs are almost entirely related to IBR, as the proposed changes in the economic hardship deferment—liberalizing the family-size criteria while eliminating the debt burden test—largely cancelled one another out. With respect to the IBR plan, the Department reviewed Direct Loan servicing system data on participation in the ICR plan and assumed borrowers participating or estimated to participate in ICR who meet the IBR eligibility criteria would stop participating in the ICR plan and choose to participate in the more generous IBR plan. Assumptions were derived by applying percentages based on historical participation in the ICR plan to loan volume forecasts for future years. Using this approach, we estimate that 126,000 borrowers in the FY 2009 loan cohort would select the IBR plan, and that of these borrowers, 44,000 would eventually have at least a portion of their loan forgiven after 25 years. By the 2012 cohort, projected growth in loan volume increase these figures to 146,000 and 52,000, respectively.

Public Service Loan Forgiveness. The Department estimates the public service loan forgiveness provisions in these proposed regulations would increase Federal costs by $1.5 billion over FY 2008–2012. (Of these costs, $1.2 billion is associated with loans made prior to 2008.) This estimate was based on an analysis of public sector job participation by student loan borrowers using information from Department Direct Loan systems and data compiled by the Census Bureau through its *Current Population Surveys.* These data indicated 32.6 percent of individuals between the ages of 21 and 28 were employed in public service positions that meet the statutory eligibility percent criteria. This age range was chosen to best capture the population of borrowers most likely to take advantage of this benefit. The Department was unable to obtain data on how long individuals remain employed in qualifying positions. In the absence of data to the contrary, and to estimate the maximum government exposure under this provision, the Department assumed all individuals would work the full 10 years needed to receive the benefit. Given the requirement that borrowers be making payments throughout the qualifying employment period, it was assumed that only borrowers choosing the IBR or ICR plan would have balances eligible for forgiveness after 10 years. The Department assumed the distribution of borrowers choosing these repayment plans was consistent with the population as a whole as indicated by the Census data. Accordingly, the Department's cost estimation model was run assuming remaining balances would be forgiven after 10 years for 32.6 percent of ICR and IBR borrowers.

SAP for Not-for-Profit Entities. The Department estimates the not-for-profit holder SAP provisions will reduce Federal costs by $2.9 billion over FY 2008–2012. These estimates are based on forecasts of commercial paper rates prepared by OMB and loan volume assumptions developed by the Department using data from the FFEL lender payment system and publicly available information on lender characteristics. Initial estimates prepared following the passage of the CCRAA assumed 12.4 percent of new FFEL loan volume will be held by not-for-profit loan holders; this percentage increased to 16.2 percent when adjusted for Public Law 110–109, as implemented by this NPRM, which removed the requirement that eligible not-for-profit holders be eligible lenders under section 435(d) of the HEA. To determine the cost of this change, the Department's loan cost model was run applying the not-for-profit SAP rates to the revised percentage of loan volume.

Net Budget Impacts

The CCRAA provisions implemented by these proposed regulations are estimated to have a net budget impact of $650 million in 2008 and $9.2 billion over FY 2008–2012. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using OMB's Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these

regulations. That said, however, in developing the Accounting Statement included below, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

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

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the CCRAA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a more robust analysis.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System, 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. Data from other sources, such as the Census Bureau, were also used. Data on administrative burden at participating schools, lenders, guaranty agencies, and third-party servicers are extremely limited; accordingly, as noted above, the Department is particularly interested in comments in this area.

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 proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for the IBR, loan deferment, and loan forgiveness provisions) and from student loan holders to the Federal government (for the SAP provisions).

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annualized Monetized Transfers:	
Federal Government to Student Loan Borrowers	$1.357 billion.
Federal Government To Student Loan Holders	568 million.
Total	1.925 billion.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the lenders and schools participating in the Federal student loan programs meet the

definition of ''small entities.'' While these lenders and schools fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 674.34, 682.205, 682.209, 682.210, 682.211, 682.215, 682.302, 685.204, 685.205, 685.219, 685.220, and 685.221 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Sections 674.34(h)–(i), 682.210(t)–(u), and 685.204(e)–(f)—Deferment of Repayment—Federal Perkins Loan, NDSLs, Defense Loans, FFEL, and Direct Loans

The proposed regulations amend the provisions related to the military service deferment and the post-active duty student deferment in the Federal Perkins, FFEL, and Direct Loan Programs.

The proposed changes regarding the post-active duty student deferment would result in an increase in the burden hours associated with the current Federal Perkins/FFEL/Direct Loan military deferment request form cleared under OMB Control Number 1845–0080. The current military deferment request form covers only the military service deferment. The form will be revised to cover both the military service deferment and the post-active duty student deferment. The Department expects to submit a revised deferment request form for OMB clearance by October 2008.

Section 682.205(h)—Disclosure Requirements for Lenders

These proposed regulations provide that, at the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and IBR plans, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans. This information may be provided in a separate notice or as part of the other disclosures required by this section.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.205 and the associated collection, OMB Control No. 1845–0020.

Section 682.209(a)—Repayment of a Loan

The proposed regulations would add the IBR plan as a repayment option for FFEL borrowers and require lenders to take certain actions when a borrower fails to select a repayment plan within 45 days of the lender notification.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.209 and the associated collection, OMB Control No. 1845–0020.

Section 682.211(f)—Forbearance

The proposed regulations would provide for a period of forbearance, not to exceed 60 days, necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the IBR program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

The proposed addition of this new type of forbearance under the IBR plan is estimated to increase the burden hours for lenders and guaranty agencies by 31,414 hours under OMB Control Number 1845–0020. (Note: This is an administrative forbearance and does not require an OMB-approved form.)

Section 682.215—Income-Based Repayment Plan

The proposed regulations provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower's aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the loan holder must recalculate the borrower's monthly repayment. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under a standard repayment plan as calculated by the loan holder.

The proposed regulations provide that a loan holder would require the borrower, in order to establish his or her eligibility for the IBR plan, to provide written consent to the disclosure of AGI and other tax return information by the IRS to the loan holder. The borrower also would be required to annually certify his or her family size; otherwise the loan holder would assume a family size of one. To determine whether a borrower qualifies for loan forgiveness after 25 years, the loan holder must make a determination that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or, that through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments. The loan holder is required, no later than 60 days after it makes the determination that the borrower is eligible for loan forgiveness, to request payment from the guaranty agency. Within 45 days of receiving the loan holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness and must notify the loan holder. If the guaranty agency determines that the borrower is eligible for loan forgiveness, it must pay the loan holder within the same 45-day period. The holder must notify the borrower within 30 days of being notified by the guaranty agency.

We estimate that the proposed regulation will increase burden for borrowers, lenders and guaranty agencies by 185,778 hours, under new OMB Control Number 1845–XXXX.

Section 682.302(x)—Eligible Not-For-Profit Holder

The proposed regulations would require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's CEO which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for-profit designation is being certified. For an entity establishing non-profit status under section 150(d) of the IRC, the submission must include copies of the requests of the State or political subdivision or subdivisions thereof, or requirements described in section 150(d) of the IRC, and the CEO's additional certification that the entity has not elected to cease its status as a qualified scholarship funding corporation. A separately submitted certification or opinion by the State or non-profit entity's external legal counsel

or the office of the attorney general of the State, must be submitted with supporting documentation that shows that the State or non-profit entity is a constituted State entity by operation of specific State law, has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation, and is incorporated under State law as a not-for-profit organization, or is an entity described in section 501(c)(3) of the IRC, or has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

Under the proposed regulations, once an entity has been approved as an eligible not-for-profit holder, the entity must provide to the Secretary an annual certification on the State or non-profit entity's letterhead signed by the CEO, which includes the name and lender identification number(s) of the entities for which designation is being recertified. The annual certification must state that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary and that it continues to satisfy the requirements of an eligible not-for-profit holder either in its own right or through a trust agreement with an eligible lender trustee. A copy of its IRS Form 990—Return of Organization Exempt From Income Tax, if applicable, must be submitted at the same time the entity files that return with the IRS as a part of the annual certification.

Within 10 days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must submit details of the change to the Secretary.

We estimate that the proposed regulation will increase burden for States, non-profit entities and eligible lender trustees by 105 hours in the new OMB Control Number 1845–XXXX.

Section 685.205(a)—Forbearance

The proposed regulations would provide for loan forbearance for a borrower who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days.

The proposed addition of a new type of forbearance will increase the burden hours associated with OMB Control Number 1845–0031, the Direct Loan Program General Forbearance Request form. The current form will be revised to cover the new forbearance condition. The Department expects to submit the revised form for clearance by October 2008.

Section 685.219—Public Service Loan Forgiveness

The Public Service Loan Forgiveness Program created by the CCRAA is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their eligible Direct loans after they satisfy the public service and loan payment requirements of this section.

The burden associated with the proposed regulations for this program will be reported in the paperwork clearance package for a new public service loan forgiveness application form under the new OMB Control Number 1845–XXX3 that the Department will develop. Because no borrowers will be eligible to apply for loan forgiveness under this program until 2017, the Department has not yet established a timeline for developing a loan forgiveness application.

Section 685.220—Consolidation

The proposed regulation permits a borrower to consolidate a FFEL Consolidation Loan into the Federal Direct Loan Program for the purpose of participating in the Public Service Loan Forgiveness Program.

We estimate that the expected increase in the number of FFEL Program borrowers who wish to consolidate into the Federal Direct Loan Program for the purpose of using the public loan forgiveness program will increase the burden hours associated with OMB Control Number 1845–0053 (Direct Consolidation Loan Application and Promissory Note). The Department will submit an OMB 83–C indicating the increased burden associated with this collection by October 2008.

Section 685.221—Income-Based Repayment Plan

The proposed regulations would provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower's aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the Secretary must recalculate the borrower's monthly repayment. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under the standard repayment plan as calculated by the Secretary.

The proposed regulations provide that the Secretary would require a borrower, in order to establish his or her eligibility for the IBR plan, to provide written consent to the disclosure of AGI and other tax return information by the IRS to the Secretary. The borrower annually certifies his or her family size; otherwise the Secretary assumes a family size of one. To qualify for loan forgiveness after 25 years, a determination must be made that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or that through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments.

The Department plans to revise the current collection approved under OMB Control Number 1845–0017, the Direct Loan Program Income Contingent Repayment Plan Consent to Disclosure of Tax Information, so that it may also be used to collect the income information needed for the Income-Based Repayment Plan. The resulting increased burden associated with OMB Control Number 1845–0017 will be reported in the paperwork clearance package for the revised form. The Department expects to submit the revised form for clearance by October 2008.

Collection of Information

Regulatory section	Information collection	Collection
674.34, 682.210, and 685.204.	This proposed regulation incorporates previous interpretive guidance related to the military service deferment and the active duty student deferment.	OMB 1845–0080. This will be a revision of an existing collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by October 2008.

Regulatory section	Information collection	Collection
682.205	This proposed regulation establishes the disclosure requirements for lenders.	OMB 1845–0020. There is no change in burden.
682.209	This proposed regulation adds income-based repayment plans available to FFEL borrowers.	OMB 1845–0020. There is no change in burden
682.211	This proposed regulation establishes the timeframe that a lender has to collect and process required documentation.	OMB 1845–0020. This will be a revision of an existing collection which is being submitted to OMB with this NPRM.
682.215	This proposed regulation provides for the collection of the borrower's income information from the IRS and to obtain an annual certification from the borrower who elects an income-based repayment plan.	OMB 1845–XXX1. This will be a new collection which is being submitted to OMB with this NPRM.
682.302	This proposed regulation requires the submission of documentation by a State, non-profit entity, or an eligible lender trustee to the Secretary to establish eligibility for not-for-profit holder status.	OMB 1845–XXX2. This will be a new collection which is being submitted to OMB with this NPRM.
685.205	This proposed regulation provides for the collection of information to determine if a Direct loan borrower who is not eligible for a post-active duty loan deferment may receive a forbearance.	OMB 1845–0031. This will be a revision of an existing collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by October 2008.
685.219	This proposed regulation establishes a new Public Service Loan Forgiveness program.	OMB 1845–XXX3. This will be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed. Because no borrowers will be eligible to apply for loan forgiveness under this program until 2017, the Department has not yet established a timeline for development of the new form.
685.220	This proposed regulation provides for the consolidation of FFEL loans into Direct Consolidation loans for the purpose of using the Public Service Loan Forgiveness program.	OMB 1845–0053. This will increase the burden associated with an existing collection. The increase will be reported on OMB Form 83–C by October 2008.
685.221	This proposed regulation provides for the collection of the borrower's income information from the IRS and to obtain an annual certification from the borrower who elects an income-based repayment plan.	OMB 1845–0017. This will be a revision of an existing collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by October 2008.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 441 of the General Education Provisions Act, 20 U.S.C.1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

List of Subjects in 34 CFR 674,682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student Aid, vocational education.

Dated: June 18, 2008.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR chapter IV as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

2. Section 674.34 is amended by:

A. In the introductory text of paragraph (e), removing the reference ''(e)(6)'' from the cross-reference in the parenthetical phrase that appears after the word ''time'' and adding, in its place, the reference ''(e)(5)'', and removing the words ''through (e)(6)'' and adding, in their place, the words ''through (e)(5)''.

B. In paragraph (e)(1), removing the word ''FDSL'' and adding, in its place, ''Federal Direct Loan Program'', and adding the word ''the'' before the words ''FFEL programs''.

C. In paragraph (e)(3)(ii), removing the words ''poverty line applicable to the borrower's family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act'' and adding, in its place, the words ''poverty guideline applicable to the borrower's family size as published annually by the Department of Health

and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States''.

D. Removing paragraph (e)(5).

E. Redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) as paragraphs (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9) respectively.

F. In newly redesignated paragraph (e)(6), removing the words ''or (e)(5)''.

G. In newly redesignated paragraph (e)(7), removing the words '', or (e)(5)'', removing the punctuation '','' after the reference ''(e)(3)'', and adding the word ''and'' after the reference ''(e)(3)''.

H. In newly redesignated paragraph (e)(8), adding ''(i)'' after the number ''(8)'' and removing the words ''and (e)(5)''.

I. Adding new paragraph (e)(8)(ii).

J. In newly redesignated paragraph (e)(9), removing the words ''and (e)(5)''.

K. In paragraph (h)(1), adding the heading ''Military service deferment'' before the paragraph designation ''(1)'' and adding the punctuation '','' after the word ''principal'' and after the word ''accrue''.

L. In paragraph (h)(4), removing the word ''section'' and adding, in its place, the word ''paragraph''.

M. Revising paragraph (h)(6).

N. Adding new paragraph (h)(7).

O. Adding a heading to paragraph (i).

P. In paragraph (i)(1), revising the introductory text.

Q. In paragraph (i)(1)(ii), adding the words '', on at least a half-time basis,'' after the word ''enrolled''.

R. Revising paragraph (i)(2).

S. In paragraph (i)(3), adding the words '', on at least a half-time basis,'' after the word ''status'' each time it appears.

T. Adding new paragraph (i)(4).

U. In paragraph (j), removing the words ''paragraph (j)'' and adding, in their place, the words ''paragraph (k)''.

The revisions and additions read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) * * *

(8)(i) For purposes of paragraphs (e)(3) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

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

* * * * *

(h) * * *

(6) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(7) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

* * * * *

(i) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty military service on that date, or who begins serving on or after that date need not pay principal, and interest does not accrue for up to 13 months following the conclusion of the borrower's active duty military service and initial grace period if— * * *

(2) As used in paragraph (i)(1) of this section ''Active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which the Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which the Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

* * * * *

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under both paragraphs (h) and (i) of this section, the 180-day post-mobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

4. Section 682.201 is amended by:

A. In paragraph (e)(3), removing the word ''and'' at the end of the paragraph.

B. In paragraph (e)(4), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words, ''; and''.

C. Adding a new paragraph (e)(5) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(e) * * *

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using the Public Service Loan Forgiveness Program.

5. Section 682.205 is amended by revising paragraph (h)(1) to read as follows:

§ 682.205 Disclosure requirements for lenders.

* * * * *

(h) * * *

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

* * * * *

6. Section 682.209 is amended by:

A. Revising paragraph (a)(6)(iii).

B. Revising paragraph (a)(6)(iv).

C. Revising paragraph (a)(6)(v).

D. Redesignating paragraphs (a)(6)(x) and (a)(6)(xi) as (a)(6)(xi) and (a)(6)(xii), respectively.

E. Adding a new paragraph (a)(6)(x).

F. In newly redesignated paragraph (a)(6)(xi), adding the words '', or at any time in the case of a borrower in an income-based repayment plan'' immediately after the word ''annually''.

G. In paragraph (a)(8), adding the words '', except in the case of payments made under an income-based repayment plan.'' immediately after the words ''five dollars'' the first time those words appear.

H. In paragraph (b)(1), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except in the case of payments made under an income-based repayment plan, the''.

I. In paragraph (b)(2)(ii), in the second sentence, removing the words ''borrower coupon book'' and adding, in their place, ''borrower's coupon book''.

J. In paragraph (c)(1)(i), removing the word ''or'' the first time it appears and adding the words '', or income-based'' immediately after the word ''extended''.

The revisions and additions read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(a) * * *

(6) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower—

(A) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule;

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender; or

(C) Chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under § 682.215(e)(1)(i) within the time period specified by the lender.

* * * * *

(x) Under an income-based repayment schedule, the borrower repays the loan in accordance with § 682.215.

* * * * *

7. Section 682.210 is amended by:

A. Revising paragraph (s)(6)(iii)(B).

B. Removing paragraphs (s)(6)(iv), (s)(6)(v), and (s)(6)(vii).

C. Redesignating paragraphs (s)(6)(vi), (s)(6)(viii), (s)(6)(ix), (s)(6)(x) and (s)(6)(xi) as paragraphs (s)(6)(iv), (s)(6)(v), (s)(6)(vi), (s)(6)(vii), (s)(6)(viii) respectively.

D. In newly redesignated (s)(6)(v), removing the words ''through (v)''.

E. In newly redesignated (s)(6)(vi), removing the words ''through (v)''.

F. Adding a new paragraph (s)(6)(ix).

G. In paragraph (t)(1), removing the word ''an'' and adding, in its place, the word ''a'' and by removing the word ''loans'' and adding, in its place, the word ''loan''.

H. In paragraph (t)(2), removing the word ''The'' at the beginning of the sentence, and adding, in its place, the words ''For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the'' and by removing the words ''for the service'' and adding, in their place, the words ''for each period of service''.

I. In paragraph (t)(6), removing the word ''section'' and adding, in its place, the word ''paragraph''.

J. Adding new paragraph (t)(9).

K. Revising the heading of paragraph (u) and the introductory text to paragraph (u)(1).

L. In paragraph (u)(1)(ii), adding the words '', on at least a half-time basis,'' after the word ''enrolled''.

M. Revising paragraph (u)(2).

N. In paragraph (u)(3), adding the words '', on at least a half-time basis,'' after the word ''status'' each time it appears.

O. Redesignating paragraph (u)(4) as (u)(5).

P. Adding new paragraph (u)(4).

The revisions and additions read as follows:

§ 682.210 Deferment.

* * * * *

(s)(6) * * *

(iii) * * *

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

* * * * *

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

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

* * * * *

(t) * * *

(9) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(u) Post-active duty student deferment. (1) Effective October 1, 2007, a borrower who receives a FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—* * *

(2) As used in paragraph (u)(1) of this section, ''active duty'' means active duty as defined in section 101 (d)(1) of title 10, United States Code for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard

under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (u)(2)(i) of this section or full-time National Guard duty under paragraph (u)(2)(ii) of this section.

* * * * *

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-mobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

8. Section 682.211 is amended by:

A. Adding a new paragraph (f)(13).

B. Adding a new paragraph (f)(14).

C. In paragraph (h)(2)(ii)(C), removing the punctuation at the end and adding, in its place, ''; and''.

D. Adding new paragraph (h)(2)(iii).

The additions read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan.

* * * * *

(h) * * *

(2) * * *

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in § 682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases enrollment, for a FFEL loan in repayment.

9. Redesignate § 682.215 as § 682.216.

10. Add a new § 682.215 to read as follows:

§ 682.215 Income-based repayment plan.

(a) *Definitions.* As used in this section—(1) Adjusted gross income (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a FFEL or Direct PLUS Loan made to a parent borrower or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size the other individuals—

(i) Live with the borrower; and

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

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

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

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

(i) The total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

(ii) The calculated amount is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(iii) The calculated amount is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan.

(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the date the borrower initially began repayment on each loan under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower

receives an economic hardship deferment.

(5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

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

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under an income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The loan holder shall apply any payment made under an income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

(2) The borrower may prepay the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).

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

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

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

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

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in § 682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

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

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the loan holder. The borrower provides consent by signing a consent form and returning it to the loan holder;

(B) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the loan holder may use other documentation provided by the borrower to verify income; and

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

(2) The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to provide or renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of $0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly amount of $0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has a FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on

that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in (f)(1) after qualifying for the income-based repayment plan.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(g) *Loan forgiveness processing and payment.* (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than 60 days after the 25-year repayment period required for forgiveness, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

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

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those loans for which income-based forgiveness was requested; or

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

(6) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established.

(7) In the case of a forgiveness applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount forgiven that is equal to the complement of the reinsurance percentage paid on the loan. The payment may also include interest that accrues on the forgiven amount from the date on which the guaranty agency received payment from the Secretary on the default claim to the date on which the guaranty agency determines that the borrower is eligible for the income-based repayment plan loan forgiveness discharge.

(Authority: 20 U.S.C. 1098e)

11. Section 682.300 is amended by:

A. In paragraph (b)(1)(ii), removing the word ''and'' at the end of the sentence.

B. In paragraph (b)(1)(iii), removing the punctuation ''.'' and adding, in its place ''; and'' at the end of the sentence.

C. Adding a new paragraph (b)(1)(iv).

D. In paragraph (b)(2)(vii), removing the word ''or'' at the end of the sentence.

E. In paragraph (b)(2)(viii), removing the word '' or'' at the end of the sentence.

F. In paragraph (b)(2)(ix), removing the punctuation ''.'' and adding in its place ''; or'' at the end of the sentence.

G. Adding a new paragraph (b)(2)(x).

The additions read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

* * * * *

(b) * * *

(1) * * *

(iv) During a period that does not exceed three consecutive years from the date a borrower initially began repayment under an income-based repayment plan, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

* * * * *

(2) * * *

(x) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying portion of the borrower's Consolidation Loan.

* * * * *

12. Section 682.302 is amended by:

A. Revising paragraph (a).

B. Adding a heading to paragraph (f)(3).

C. Revising the introductory text of paragraph (f)(3)(i).

D. Revising paragraph (f)(3)(i)(D).

E. Redesignating paragraphs (f)(3)(ii), (f)(3)(iii), (f)(3)(iv), (f)(3)(v), and (f)(3)(vi) as paragraphs (f)(3)(iii), (f)(3)(v), (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix), respectively.

F. Adding new paragraph (f)(3)(ii).

G. Revising redesignated paragraph (f)(3)(iii).

H. Adding new paragraph (f)(3)(iv).

I. Revising redesignated paragraph (f)(3)(v).

J. Adding new paragraph (f)(3)(vi).

K. Revising redesignated paragraph (f)(3)(vii).

L. Revising redesignated paragraph (f)(3)(viii).

M. Revising redesignated paragraph (f)(3)(ix).

N. Adding new paragraphs (f)(3)(x), (f)(3)(xi), and (f)(3)(xii).

O. Redesignating paragraph (f)(4) as (f)(3)(xiii).

P. Revising redesignated paragraph (f)(3)(xiii).

The revisions and additions read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also paid on the unpaid accrued interest of a loan covered by § 682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

* * * * *

(f) * * *

(3) *Eligible not-for-profit holder.* (i) For purposes of this section, the term

''eligible not-for-profit holder'' means an eligible lender under section 435(d) of the Act (except for a school) that requests special allowance payments from the Secretary and that is— * * *

(D) A trustee acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, other than a school that is a lender under § 682.200 (''Lender''), regardless of whether that State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under section 435(d) of the Act.

* * * * *

(ii) For purposes of paragraph (f)(3) of this section, the term ''State or non-profit entity'' means an entity that is not a school and that is described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of the Act.

(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such lender—

(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and had made or acquired on or before September 27, 2007, a FFELP Loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or

(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.

(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.

(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity, shall not be an eligible not-for-profit holder if the State or non-profit entity is owned or controlled, in whole or in part, by a for-profit entity. A for-profit entity has ownership and control of a State or non-profit entity, for purposes of this paragraph if—

(A) The for-profit entity is a member or shareholder of a State or non-profit entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity;

(B) The for-profit entity employs or appoints individuals that together constitute a majority of the State or non-profit entity's board of trustees or directors, or a majority of such board's audit committee, executive committee, or compensation committee; or

(C) For a State or non-profit entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity if it possesses directly, or represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in § 600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) ''Beneficial owner'' (including ''beneficial ownership'' and ''owner of a beneficial interest'') means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) ''Sole owner'' means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vii) No State or non-profit entity, and no trustee to the extent acting on behalf of such a State or non-profit entity, shall be an eligible not-for-profit holder with respect to any loan, or income from any loan on which payment is claimed at the rate established under paragraph (f)(2) of this section, unless such State or non-profit entity is the sole owner of the beneficial interest in such loan and the income from such loan.

(viii) (A) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of a State or non-profit entity in excess of reasonable and customary fees paid for providing the particular service or services which the trustee undertakes to provide to such entity.

(B) Fees are reasonable and customary, for purposes of this paragraph, if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity that are not eligible to receive special allowance payments at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the State or non-profit entity that the Secretary considers reliable.

(C) Loans owned by the State or non-profit entity for which the trustee receives fees in excess of the amount permitted by paragraph (f)(3)(viii) of this section cease to qualify for a special allowance payment at the rate prescribed under paragraph (f)(2) of this section.

(ix) For purposes of paragraph (f)(3) of this section, if a State or non-profit entity, or a trustee acting on its behalf, grants a security interest in, or otherwise pledges as collateral, a loan, or the income from a loan, to secure a debt obligation for which such State or non-profit entity is the issuer of that debt obligation, the State or non-profit entity shall not, by such action—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan.

(x) *Not-for-profit holder eligibility determination.* A State or non-profit entity that seeks to qualify as an eligible not-for-profit holder, either in its own right or through a trust agreement with

an eligible lender trustee, must provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(*1*) States the basis upon which the entity qualifies as a State or non-profit entity;

(*2*) Includes documentation establishing its status as a State or non-profit entity;

(*3*) Includes the name and lender identification number(s) of the entities for which designation is being certified; and

(*4*) For an entity establishing status under section 150(d) of the Internal Revenue Code of 1986, includes copies of the requests of the State or political subdivision or subdivisions thereof or requirements described in section 150(d)(2) of the Code and the CEO's additional certification that the entity has not elected under section 150(d)(3) of the Code to cease its status as a qualified scholarship funding corporation.

(B) A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, with supporting documentation that shows that the State or non-profit entity—

(*1*) Is a constituted State entity by operation of specific State law;

(*2*) Has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d)(2) of the Code, has not made the election described under section 150(d)(3) of the Code, and is incorporated under State law as a not-for-profit organization;

(*3*) Is incorporated under State law as a not-for-profit organization or is an entity described in section 501(c)(3) of the Code; or

(*4*) Has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

(xi) *Annual certification by eligible not-for-profit holder.* A State or non-profit entity that seeks to retain its eligibility as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must annually provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(*1*) Includes the name and lender identification number(s) of the entities for which designation is being recertified;

(*2*) States that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and

(*3*) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, as defined in this section, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, at the same time it files that return with the Internal Revenue Service.

(xii) *Not-for-profit holder change of status.* Within 10 business days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary's determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary's determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change to the date of the Secretary's determination equal to the difference between special allowance at the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

13. Section 682.304 is amended by:

A. Redesignating paragraph (d)(2) as paragraph (d)(3).

B. Adding a new paragraph (d)(2).

C. In newly designated paragraph (d)(3), removing the words ''paragraph (d)(1)'' and adding, in their place, the words ''paragraphs (d)(1) and (2)''.

The addition reads as follows:

§ 682.304 Method of computing interest benefits and special allowance.

* * * * *

(d) * * *

(2) To compute the average daily balance of unpaid accrued interest for purposes of special allowance on loans covered by § 682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at the applicable interest rate.

* * * * *

14. Section 682.405 is amended by:

A. Revising paragraph (b)(4) to read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

* * * * *

§ 682.410 [Amended]

15. Section 682.410 is amended by:

A. In paragraph (b)(5)(vi)(G), adding the words '', which must include consideration of the borrower's eligibility for income-based repayment,'' immediately after the words ''satisfactory to the agency''.

B. In paragraph (b)(9)(i)(D), adding the words '', which must include consideration of the borrower's eligibility for income-based repayment'' immediately after the words ''to the agency''.

§ 682.411 [Amended]

16. Section 682.411 is amended, in paragraph (d)(1), by adding the words '', income-based repayment'' immediately after the words ''income-sensitive repayment''.

§ 682.604 [Amended]

17. Section 682.604 is amended by:

A. In paragraph (g)(2)(ii), removing the words ''and income-sensitive'' and adding, in their place, the words ''income sensitive, and income-based''.

B. In paragraph (g)(2)(v), adding the words ''forgiveness or'' immediately after the words ''full or partial'', and adding the words '', including forgiveness or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program'' immediately after the words ''of a loan''.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

19. Section 685.204 is amended by:

A. Adding a heading to paragraph (e).

B. In paragraph (e)(2), removing the word ''The'' and adding, in its place, the words ''For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the'' before the word ''deferment'' and by adding the words ''each period of'' before the words ''service described''.

C. In paragraph (e)(6), removing the word ''section'' and adding in its place the word ''paragraph''.

D. Adding a new paragraph (e)(7).

E. In paragraph (f), adding the heading ''Post-Active Duty Student Deferment'' before the paragraph designation ''(1)''.

F. In paragraph (f)(1)(ii), adding the words ''on at least a half-time basis'' after the word ''enrolled''.

G. Revising paragraph (f)(2).

H. In paragraph (f)(3), adding the words ''on at least a half-time basis'' after the word ''status'' each time it appears and the words ''grace period or the'' before the words ''13-month''.

I. Adding new paragraph (f)(4).

J. In paragraph (h)(1), removing the word ''granted''.

The revision reads as follows:

§ 685.204 Deferment.

* * * * *

(e) Military service deferment.

* * * * *

(7) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

(f) Post-Active Duty Deferment.

* * * * *

(2) As used in paragraph (f)(1) of this section, ''Active Duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (f)(2)(i) of this section or full-time National Guard duty under paragraph (f)(2)(ii) of this section.

* * * * *

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-mobilization deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

20. Section 685.205 is amended by:

A. Adding a new paragraph (a)(7) to read as follows:

§ 685.205 Forbearance.

* * * * *

(a) * * *

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

* * * * *

21. Section 685.208 is amended by:

A. Revising paragraph (a).

B. Adding a new paragraph (m).

The revisions and addition read as follows:

§ 685.208 Repayment plans.

(a) *General.* (1) *Borrowers who entered repayment before July 1, 2006.* (i) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), (f), (k), and (m) of this section, respectively.

(ii) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (d), and (f) of this section, respectively.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(ii)(A) A Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(B) A Direct PLUS Loan that was made to a parent borrower may be repaid under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (e), and (g) of this section, respectively.

(iii) A borrower may repay a Direct Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or, unless the Direct Consolidation Loan repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan, the income-based repayment plan, in accordance with paragraphs (c), (e), (h), (k), and (m) of this section, respectively. A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may not be repaid under the income-based repayment plan.

(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, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006 may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in § 685.209 and § 685.221 for the income contingent or income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

* * * * *

(m) *Income-based repayment plan.* (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) The specific provisions governing the income-based repayment plan are in § 685.221.

22. Section 685.209 is amended by revising paragraph (c)(4) to read as follows:

§ 685.209 Income contingent repayment plan.

* * * * *

(c) * * *

(4) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes—

(A) Periods in which the borrower makes payments under the income-contingent repayment plan on loans that are not in default;

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(D) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(E) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(F) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(G) Periods of economic hardship deferment after October 1, 2007.

* * * * *

23. Section 685.210 is amended by revising paragraph (b)(2) to read as follows:

§ 685.210 Choice of repayment plan.

* * * * *

(b) * * *

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to either the income contingent or income-based repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan or the income-based repayment plan, the repayment period is calculated as described in § 685.209(c)(4) or § 685.221(b)(6), respectively.

* * * * *

24. Section 685.211 is amended by:

A. Revising paragraph (a) introductory text and (a)(1).

B. Revising paragraph (d)(3)(ii).

The revisions read as follows:

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) Except as provided for the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

* * * * *

(d) * * *

(3) * * *

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan—

(A) The Secretary may designate the income contingent repayment plan for the borrower; or

(B) If the borrower qualifies, the borrower may select the income-based repayment plan.

* * * * *

25. Section 685.212 is amended by:

A. Redesignating paragraph (i) as paragraph (j).

B. Adding new paragraph (i) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(i) *Public Service Loan Forgiveness Program.* If a borrower meets the requirements in § 685.219, the Secretary cancels the remaining principal and accrued interest of the borrower's eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

* * * * *

26. A new § 685.219 is added to read as follows:

§ 685.219 Public Service Loan Forgiveness Program.

(a) *General.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) The number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer is not considered in determining the average hours worked on an annual or contract basis.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government.

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means ''active duty'' service or ''full-time National Guard duty'' as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, ''Military service'' means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, public child care, public service for individuals with disabilities and the elderly, public health, public education, public library services, school library or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) Borrower eligibility. (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness, and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps position, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a Parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221;

(B) Except for a Parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209;

(C) A standard repayment plan, as determined in accordance with § 685.208(b); or

(D) Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).

(2) If a borrower uses all or part of a Segal Education Award received after a year of AmeriCorps service to make a lump sum payment on an eligible loan for which the borrower is seeking forgiveness, the Secretary considers the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment from the Segal Education Award by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

(d) *Forgiveness Amount.* The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) *Application.* (1) After making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of that determination.

(Authority: 20 U.S.C. 1087e(m))

27. Section 685.220 is amended by:

A. Redesignating paragraph (d)(1)(i)(B)(*3*) as (d)(1)(i)(B)(*4*).

B. In newly redesignated paragraph (d)(1)(i)(B)(*4*), adding the words ''is in default or'' after the word ''that''.

C. Adding new paragraph (d)(1)(i)(B)(*3*).

D. Adding new paragraph (d)(1)(i)(B)(*5*).

E. In paragraph (d)(1)(ii)(A), removing the word ''a'' and adding, in its place, the words ''the grace'' before the word ''period''.

F. In paragraph (d)(1)(ii)(D), adding the words '', or the income-based repayment plan described in § 685.208(m),'' after the reference to ''§ 685.220(k)'' and the words ''or § 685.221(e)'' after the reference to ''§ 685.209(d)(5)''.

The additions read as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*3*) The borrower wishes to use the Public Service Loan forgiveness program;

* * * * *

(*5*) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Federal Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program.

* * * * *

28. A new § 685.221 is added to read as follows:

§ 685.221 Income-based repayment plan.

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

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

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL or Direct Loan programs except for a FFEL or Direct PLUS Loan made to a parent borrower or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

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

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

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

(b) *Terms of the repayment plan.* (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(2) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

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

(i) The total amount of the borrower's eligible loans are not Direct Loans, in which case, the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) The calculated amount is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(iii) The calculated amount is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

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

(4) Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

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

(6) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* The Secretary applies any payment made under an income-based repayment plan in the following order:

(1) Accrued interest.

(2) Collection costs.

(3) Late charges.

(4) Loan principal.

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

(i) The maximum monthly amount that the borrower may be required to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

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

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

(i) A maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in § 685.208(j) for the amount of the borrower's loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

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

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower provides consent by signing a consent form and returning it to the Secretary;

(B) If a borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) The Secretary designates the repayment option described in

paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to provide or renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(ii) of this section.

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

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b).

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) based on the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Paid Direct Loans under the income-contingent repayment plan.

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

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan after qualifying for the income-based repayment plan; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) If the Secretary determines that a borrower satisfies the loan forgiveness requirements, the Secretary cancels the outstanding balance and accrued interest on the Direct Consolidation Loan described in paragraph (f)(3)(i), (iii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section.

(Authority: 20 U.S.C. 1098e)

29. Section 685.304 is amended by:

A. Revising paragraph (b)(4)(ii).

B. Revising paragraph (b)(4)(vi).

The revisions read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(4) * * *

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, income contingent repayment, and income-based repayment plans, and loan consolidation.

* * * * *

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial forgiveness or discharge of a loan;

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