DEPARTMENT OF EDUCATION

34 CFR Parts 673, 674, 682, and 685

RIN 1840–AC98

[Docket ID ED–2009–OPE–0004]

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

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA), and other recently enacted legislation.

DATES: *Effective Date:* These regulations are effective July 1, 2010.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA)(20 U.S.C. 1089(c)(2)(A)), that lenders, guaranty agencies, and loan servicers that administer the FFEL and Direct Loan programs may, at their discretion, choose to implement the new provisions in §§ 682.211(f) and 685.205(b) governing administrative forbearances for PLUS loans on or after November 1, 2009. For further information, *see* the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to total and permanent disability loan discharges, Jon Utz or Pamela Moran. Telephone: (202) 377–4040 or (202) 502–7732 or via the Internet at: *jon.utz@ed.gov* or *pamela.moran@ed.gov*. For information related to FFEL and Direct Loan teacher loan forgiveness, Donald Conner or Jon Utz. Telephone: (202) 502–7818 or (202) 377–4040 or via the Internet at: *donald.conner@ed.gov* or *jon.utz@ed.gov*. For information related to all other provisions included in these final regulations, Pamela Moran. Telephone: (202) 502–7732 or via the Internet at: *pamela.moran@ed.gov*.

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

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SUPPLEMENTARY INFORMATION: On July 23, 2009, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins Loan, FFEL, and Direct Loan Programs in the **Federal Register** (74 FR 36556).

In the preamble to the NPRM, the Secretary discussed on pages 36558 through 36575 the major regulations proposed in that document to implement provisions of the HEOA, including the following:

- Amending §§ 674.51(aa) and 682.200(b) by revising the definition of ''totally and permanently disabled'' for title IV loan discharges to incorporate statutory changes made by the HEOA, including a separate total and permanent disability standard for certain veterans, and adding a definition of ''substantial gainful activity'' in §§ 674.51(x) and 685.200(b) to explain the meaning of that term as used in the revised definition of totally and permanently disabled. The changes to § 674.51(aa) and § 674.51(x) appear in final regulations published in the **Federal Register** on October 28, 2009 (RIN 1840–AC95).
- Amending §§ 674.61(b), 682.402(c)(2) through (7), and 685.213(b) by revising the process for discharging a borrower's title IV loans due to total and permanent disability to reflect the revised definition of totally and permanently disabled, including the establishment of a separate discharge process for certain veterans.
- Amending §§ 674.9(g), 682.201(a), and 685.200(a) by making conforming changes to the borrower eligibility regulations needed to effectively implement the new total and permanent disability loan discharge process in §§ 674.61(b), 682.402(c)(2) through (7), and 685.213(b).
- Amending §§ 682.201(e) and 685.220(d) to provide that a borrower with only FFEL Program loans may consolidate those loans into the Direct Loan Program to use the no accrual of interest benefit for active duty military service members.
- Amending § 682.206(f) to require FFEL Program lenders to inform borrowers that by applying for a Consolidation loan, the borrower is not obligated to agree to take the loan, and to provide borrowers with a 10-day period to cancel the Consolidation loan.
- Amending §§ 682.210 and 685.204 to provide that: (1) A parent PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008 while the dependent student for whom the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period after the student ceases to be enrolled at least half time; and (2) a graduate or professional student PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period after the student ceases to be enrolled on at least a half-time basis at an eligible institution.
- Amending § 682.202(b) to provide that a lender may capitalize PLUS loan interest that has accrued from the date of the first disbursement until the date the repayment period begins, and making a corresponding change in § 685.202(b) to provide that the Secretary may capitalize interest on a PLUS loan when the loan enters repayment.
- Amending §§ 682.211(f) and 685.205(b) to provide that a FFEL lender or the Secretary (for a Direct Loan) may grant an administrative forbearance on a borrower's PLUS loans that were first disbursed before July 1, 2008 to align the repayment begin date of those loans with the borrower's PLUS loans first disbursed on or after July 1, 2008 that are eligible for the new PLUS loan deferments in §§ 682.210 and 685.204.
- Amending §§ 682.202 and 685.202 to provide that any FFEL or Direct Loan program loans of a military servicemember that were incurred before the servicemember entered military service are subject to the provision in section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 527) (SCRA) that limits the interest rate on a loan to six percent during periods of active duty service. In addition, § 682.302 was amended to provide that for FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the SCRA interest rate cap, a lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate is six percent.
- Amending §§ 682.210(c)(1) and 685.204(b)(1)(iii)(A) to provide that a FFEL lender or the Secretary (for a Direct Loan) may grant an in-school deferment based on confirmation of the borrower's enrollment status through the National Student Loan Data System (NSLDS), if requested by the borrower's school.
- Amending § 682.210(a)(3) to require a lender to notify a borrower of an unsubsidized loan, at or before the time a deferment is granted, that he or she has the option to pay the interest that accrues on the loan during the

deferment or to cancel the deferment, and to provide the borrower with information on the impact of interest capitalization if accrued interest is not paid. A comparable change was made in § 685.204(b)(1)(ii)(B) to provide for the same information to be given to Direct Loan borrowers.

• Amending §§ 682.215(a) and 685.221(a) by revising the definition of partial financial hardship for the purpose of determining a borrower's eligibility to repay under the income-based repayment (IBR) plan. The revised definition specifies that the annual amount due on a borrower's eligible loans (under a standard repayment plan with a 10-year repayment period) for purposes of determining whether a borrower has a partial financial hardship is calculated based on the greater of: (1) The amount owed on the eligible loans when the borrower initially entered repayment; or (2) the amount owed when the borrower selected the IBR plan.

• Amending §§ 682.215(b)(1) and 685.221(b)(2) to provide that if a borrower who requests the IBR plan and the borrower's spouse both have eligible loans and file a joint Federal tax return, the calculated IBR partial financial hardship payment amount for each borrower would be adjusted based on each borrower's percentage of the couple's total eligible loan debt.

• Amending §§ 682.216 and 685.217 to specify that an otherwise eligible borrower may qualify for teacher loan forgiveness based on teaching service performed as an employee of an eligible educational service agency. The proposed regulations also added HEOA prohibitions on receiving loan forgiveness under the FFEL or Direct Loan teacher loan forgiveness programs and certain other loan forgiveness programs for the same period of teaching service.

• Amending §§ 682.405(a) and 685.211(f) to provide that a borrower may not rehabilitate a defaulted FFEL or Direct Loan program loan more than once. The proposed regulations also amended § 682.405(b)(1)(iii) to clarify that both the guaranty agency and its agents must comply with the requirements in that section when determining what constitutes a ''reasonable and affordable'' payment amount for loan rehabilitation purposes.

• Amending §§ 682.200(b) and 682.401(e) by incorporating new prohibited and permissible activities by lenders and guaranty agencies that were added to the HEA by the HEOA.

• Amending § 682.205 by adding new disclosure requirements for FFEL Program lenders that were added by the HEOA, and by reorganizing the existing disclosure provisions to accommodate the new disclosure requirements and more clearly distinguish the various disclosures that are required at various points during the lifecycle of a loan.

• Amending § 682.208(e) to specify additional information that must be provided to a borrower if the assignment or transfer of ownership interest on a FFEL Program loan results in a change in the identity of the party to whom the borrower must send subsequent payments.

• Amending § 682.211(e) to require a lender, at the time a borrower is granted a forbearance, to provide the borrower with information on the impact of interest capitalization, and to contact the borrower at least once every 180 days during any period of forbearance and provide additional information on the impact of forbearance on the borrower's loan.

• Amending § 682.305(c) to require that a FFEL school lender or an eligible lender trustee (ELT) originating loans on behalf of a school submit an annual compliance audit to the Secretary, regardless of the dollar volume of loans originated. The proposed regulations also specify the requirements that the annual audit must meet.

• Adding a new § 682.401(g) to implement a statutory requirement for a guaranty agency to work with the schools that it serves to develop and make available to students and their families high-quality educational materials that provide training in budgeting and financial management.

• Amending § 682.405 to require a guaranty agency to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

• Amending § 682.405(b) to require the prior holder of a previously defaulted loan that has been rehabilitated, in addition to the guaranty agency, to request that any consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations also provided more detailed reporting deadlines for the guaranty agency and prior loan holder to request that the default be removed from the borrower's credit history, and reduced the period for these actions to be completed.

• Amending § 682.410(b) by expanding the information that a guaranty agency must provide to a borrower who is in default, and by adding a requirement that the guaranty agency provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its collection efforts.

• Amending § 682.200(b) by removing the definition of ''National credit bureau'' and replacing it with a definition of ''Nationwide consumer reporting agency''. The proposed regulations also replaced all references to ''credit bureau'' in § 682.410(b)(5) and (b)(6) with ''consumer reporting agency''.

There are no significant differences between the NPRM and these final regulations resulting from public comments.

In addition to the changes necessary to implement provisions of the HEOA, these final regulations also incorporate certain changes made to the HEA by Public Law 111–39, enacted on July 1, 2009, and by the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. 110–227) (ECASLA), enacted on May 7, 2008. These changes are:

• Amending the definition of ''estimated financial assistance'' (EFA) in §§ 673.5(c), 682.200(b), and 685.102(b). The HEOA amended section 480(j)(1) of the HEA to exclude Federal veterans' education benefits, as defined in section 480(c) of the HEA, from the definition of EFA for the Title IV student assistance programs. Public Law 111–39 made technical corrections to the HEA that, among other things, updated the list of Federal veterans' education benefits that are excluded from EFA and excluded the new Iraq and Afghanistan Service Grants from the definition of EFA. We have made technical changes to the definition of EFA in §§ 673.5(c), 682.200(b), and 685.102(b) to reflect these recent changes to the HEA. We have also made a few technical changes to clarify and standardize the current EFA definitions.

• Amending the lists of prohibited activities in §§ 682.200 and 682.401 to reflect a change made by Public Law 111–39 that allows FFEL Program lenders and guaranty agencies to provide in-person entrance counseling as well as exit counseling to borrowers.

• Amending §§ 682.216 and 685.217 to reflect a technical correction made by Public Law 111–39 to the provisions that prohibit a borrower from receiving, for the same teaching service, loan forgiveness under the FFEL or Direct Loan teacher loan forgiveness programs and certain other loan forgiveness programs.

• Amending §§ 682.204 and 685.203 to reflect the changes to the annual and aggregate loan limits for unsubsidized Stafford Loans in both the FFEL and Direct Loan programs that were made by ECASLA.

In addition to the changes related to Public Law 111–39 and ECASLA that are discussed above, these final regulations make a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the Analysis of Comments and Changes section.

Waiver of Proposed Rulemaking and Negotiated Rulemaking Regulations Implementing the HEOA

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish an NPRM and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the APA.

Although the regulations implementing the changes made by Public Law 111–39 and ECASLA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary has determined that it is unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the limited regulatory changes. These changes simply reflect statutory changes made by Public Law 111–39 and ECASLA that are already effective. The Secretary does not have discretion as to whether or how to implement these changes.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the new provisions in §§ 682.211(f) and 685.205(b) governing administrative forbearances for PLUS loans for early implementation at the discretion of each lender, guaranty agency, or servicer, as appropriate.

Analysis of Comments and Changes

Except as noted above in regard to the limited regulations implementing provisions of Public Law 111–39 and ECASLA, the regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 23, 2009, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 24. Eighteen parties submitted comments, many of which were substantially similar. The commenters generally supported the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Total and Permanent Disability Loan Discharges (§§ 674.61(b) and (c), 682.402(c), and 685.213)

Comment: One commenter noted that there are a significant number of United States citizens who live abroad and suggested that the regulations be revised to allow a disabled borrower living overseas to submit an application for a total and permanent disability discharge certified by a physician who is licensed to practice in the foreign country where the borrower resides.

Discussion: The proposed regulations retained the current regulatory requirement that the physician who certifies a total and permanent disability discharge application must be a doctor of medicine or osteopathy who is legally authorized to practice in a State. The term ''State'' is defined in section 103(23) of the HEA to include the States of the United States, the District of Columbia, Puerto Rico, Guam, Samoa, the U.S. Virgin Islands, the Northern Mariana Islands and the Freely Associated States (the Marshall Islands, Micronesia and Palau). The total and permanent disability discharge application requires the certifying physician to identify the State in which he or she is licensed to practice, and to provide his or her professional license number.

In June 1999, the Department of Education's Inspector General (IG) issued a report that identified a number of weaknesses in the procedures for determining eligibility for total and permanent disability loan discharge and concluded that inappropriate discharges were being granted as a result of those weaknesses. In the years since the IG's report, the Department has revised the total and permanent disability discharge regulations and taken other measures to strengthen the procedures for determining a borrower's eligibility for discharge, including verification through State records of a physician's license to practice. This verification is conducted for each total and permanent disability discharge application that the Department reviews. Licensure requirements for physicians in foreign countries may differ significantly from the requirements in the United States, or in some countries may not exist. It would not be possible for the Department to verify a physician's license to practice in a foreign country, even if a country requires its physicians to be licensed. The Department also follows up with physicians who certified an application but did not provide sufficient information concerning the borrower's medical condition. Having to contact and

communicate with physicians in foreign countries would be difficult in many cases.

For these reasons, the Department believes that it is important to retain the requirement that a physician who certifies a total and permanent disability discharge application must be licensed to practice in a State.

Changes: None.

Comment: One commenter believed that the preamble to the NPRM indicated that the Department's standard for determining disability is essentially the same as the standard used in the Social Security Disability Insurance (SSDI) program, and suggested that the process of determining a borrower's eligibility for total and permanent disability discharge could be made more efficient if the Department provided an electronic means for a borrower to report that he or she is receiving SSDI benefits.

Discussion: The commenter's understanding of the preamble discussion in the NPRM is incorrect. In the preamble to the NPRM, the Department explained that the proposed definition of substantial gainful activity—not the definition of totally and permanently disabled—is based, in part, on the definition of substantial gainful activity that is used by the Social Security Administration (SSA) to determine whether an individual is eligible for Social Security disability benefits. The NPRM included the definition of totally and permanently disabled that was added to the HEA by the HEOA. This new statutory standard does not correspond to any of the disability standards used by the SSA for determining an individual's eligibility for Social Security disability benefits. An individual who receives SSA disability benefits may not qualify as totally and permanently disabled under the definition of that term in the HEA.

Changes: None.

Comment: Two commenters recommended that the Department revise the total and permanent disability discharge regulations to use the poverty guideline amount for a borrower's actual family size to determine whether the borrower's annual employment earnings during the post-discharge monitoring period demonstrated that the borrower was not totally and permanently disabled. One of the commenters stated that borrowers with larger families should be allowed to earn more income during the post-discharge monitoring period. This commenter suggested that any concerns about potential borrower confusion over the use of a variable standard based on actual family size could be resolved by annually posting an updated poverty guideline chart on a Department Web site.

Discussion: During the negotiated rulemaking sessions, the Department initially proposed an annual earnings standard based on the poverty guideline amount for the borrower's actual family size because we believed that it would be more equitable for borrowers with a family size greater than two. The Department's original proposal would have been a change from the employment earnings standard under the current total and permanent disability discharge regulations, which provide that a conditionally discharged loan will be removed from conditional discharge status if a borrower has annual employment earnings during the conditional discharge period that exceed the poverty guideline amount for a family of two, regardless of the borrower's actual family size. However, during the negotiated rulemaking sessions, some of the non-Federal negotiators, including the student and legal aid representatives, felt strongly that it would be better to continue to use the poverty guideline amount for a family of two. These negotiators noted that a borrower's family size could change during the three-year post-discharge monitoring period, and in such cases the borrower would have to monitor changes in the employment earnings limit. They believed that a changing standard would be confusing and could result in a borrower inadvertently exceeding the employment earnings limit. These negotiators urged the Department to retain the current fixed standard based on a family size of two. The Department agreed that retaining a fixed employment earnings limit based on the poverty guideline amount for a family of two during the entire post-discharge monitoring period would be less confusing for borrowers and simpler to administer.

Changes: None.

Comment: Several commenters noted that under the proposed regulations in § 682.402(c)(8) governing total and permanent disability discharges for certain veterans, if the Department determines that a veteran is eligible for a loan discharge, the guaranty agency is responsible for notifying the veteran that the veteran has no obligation to make further payments on the loan. These commenters recommended that the regulations be revised to provide that the lender, rather than the guaranty agency, would notify the veteran of his or her eligibility for discharge. The commenters believed that it would be simpler to require the lender to make this notification, since the proposed regulations already require the lender to refund any payments received on the loan after the date of the Department of Veterans Affairs disability determination, and the lender would therefore already be communicating with the borrower for this purpose. The commenters further noted that this approach would be more consistent with the proposed regulations governing the general process for total and permanent disability discharges for other borrowers. Under those regulations, the lender notifies a borrower that his or her loan has been assigned to the Department for a determination of discharge eligibility, and that no further payments are required.

Discussion: The Department agrees with the commenters.

Changes: Section 682.402(c)(8)(ii)(F) has been revised to specify that upon receipt of the claim payment from the guaranty agency (after the Department has notified the guaranty agency that a veteran is eligible for a discharge), the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged.

Comment: Several commenters recommended that the changes to the total and permanent disability discharge definition and process should be made effective for discharge applications received on or after July 1, 2010. The commenters believed that using the application receipt date as the effective date for the changes would benefit borrowers who may not qualify for discharge based on the current definition of totally and permanently disabled, and would provide a clearly defined transition point for processing discharge applications under the new regulations.

Discussion: Under these final regulations, the new definition of totally and permanently disabled and the new discharge process are effective for discharge applications received on or after July 1, 2010. Disability discharge applications from borrowers other than qualified veterans that are received prior to July 1, 2010 will be processed under the current regulations and borrower eligibility will be determined based on the current definition of totally and permanently disabled. Veterans who provide documentation that they have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability will have their discharge applications processed under the separate procedures that the Department has already implemented for these

borrowers in accordance with the requirements of the HEOA.

Changes: None.

Comment: One commenter expressed concerns that many disabled military borrowers are unaware that they may qualify for total and permanent disability discharge of their loans because of widespread problems with a lack of information about this benefit from both FFEL Program lenders and the Department. The commenter recommended a number of operational measures that lenders, the Department, the Department of Defense, and the Department of Veterans Affairs should take to help ensure that disabled military borrowers are made aware of the total and permanent disability loan discharge provision. The commenter also recommended that loan amounts discharged due to total and permanent disability should not be treated as taxable income, since this presents a financial hardship for disabled borrowers with low incomes.

Discussion: The Department provides information about total and permanent disability discharges on the master promissory notes that are signed by all borrowers in all three title IV loan programs. Further, information about total and permanent disability discharges is also available on Department Web sites, such as Student Aid on the Web (*http://www.studentaid.ed.gov*) and the Direct Loan Program Web site (*http://www.ed.gov/DirectLoan*), as well as Web sites maintained by many FFEL Program lenders. Moreover, customer service representatives for the Department have been given information about the disability discharge process and can provide this information to borrowers. These efforts do not have to be addressed in the Department's regulations. The commenter's proposal regarding the tax treatment of discharged loan amounts would require a statutory change in the Internal Revenue Code and cannot be addressed through these regulations.

Changes: None.

Comment: One commenter requested clarification of the provisions in §§ 674.9(g), 682.201(a), and 685.200(a) that require a borrower who requests a new title IV loan after receiving a total and permanent disability discharge on a prior loan to: (1) Provide a physician's certification that he or she is able to engage in substantial gainful activity; and (2) acknowledge that the new loan may not be discharged in the future based on any medical condition present at the time the new loan is made, unless that condition substantially deteriorates. Specifically, the commenter asked if these requirements apply to all borrowers who received a prior total and permanent disability discharge, regardless of whether the discharge was granted under the general discharge procedures or the special procedures for certain veterans.

Discussion: The requirements for receiving a new loan after having a loan discharged due to total and permanent disability apply to all borrowers, regardless of whether the discharge was granted under the general discharge process or the special discharge process for certain veterans. These requirements are intended to assure that the borrower is likely to repay the loan in accordance with the promissory note that the borrower signs for the new loan.

Changes: None.

Comment: One commenter recommended that current § 682.201(a)(6), which specifies the additional eligibility requirements that must be met by a borrower who requests a new loan following a final discharge of a prior title IV loan due to a total and permanent disability, also be applied to a borrower who is requesting a new loan after receiving a final discharge of a TEACH Grant service obligation due to a total and permanent disability. The commenter believed that an individual who wants to receive a new loan after previously receiving a final total and permanent disability discharge should have to meet the same eligibility requirements, regardless of whether the prior disability discharge involved a title IV loan or a TEACH Grant service obligation.

The commenter also asked if the Department's National Student Loan Data System (NSLDS) will indicate that a TEACH Grant service obligation has been discharged due to a total and permanent disability, just as it currently identifies title IV loans that have been discharged due to a total and permanent disability.

Discussion: The Department agrees that a borrower who requests a new title IV loan after previously receiving a final total and permanent disability discharge of a TEACH Grant service obligation should be subject to the same eligibility requirements as a borrower who previously received a final total and permanent disability discharge of a title IV loan. NSLDS does identify TEACH Grant service obligations that have been discharged based on the grant recipient's total and permanent disability.

Changes: Section 682.201(a)(6) has been revised by adding a reference to TEACH Grant service obligations. Corresponding changes have also been made in §§ 674.9(g) and 685.200(a)(1)(iv).

Comment: One commenter raised concerns about the requirement in current § 682.402(h)(1)(i)(B) as it relates to the proposed regulations in § 682.402(c)(8) that govern the total and permanent disability discharge process for certain veterans. Under current § 682.402(h)(1)(i)(B), a guaranty agency must promptly review a disability discharge claim filed by a lender and pay an approved claim within 90 days after the claim was filed. The commenter believed that this deadline is reasonable in the case of a disability claim processed under the standard discharge process in proposed § 682.402(c)(1) through (7), since all of the actions that are required to pay a lender's claim are entirely under the guaranty agency's control. However, the commenter noted that under the separate discharge process for certain veterans in proposed § 682.402(c)(8), a guaranty agency cannot pay a lender's disability claim until the Department has reviewed the veteran's discharge request and notified the guaranty agency that the veteran is eligible for discharge. Therefore, a delay in the Department's review of a veteran's discharge request could prevent a guaranty agency from meeting the 90-day time limit in current § 682.402(h)(1)(i)(B). The commenter recommended that the Department amend current § 682.402(h)(1)(i)(B) to provide one deadline for a guaranty agency to review a disability claim involving a veteran's discharge request and either refer the discharge application and any supporting documentation to the Department or return it to the lender, and a separate deadline for the guaranty agency to either pay or return the claim, as applicable, after being notified by the Department that the veteran is or is not eligible for discharge.

Discussion: The Department agrees with the commenter.

Changes: Section 682.402(h)(1) has been revised to provide that a guaranty agency must review a disability claim based on a veteran's discharge request under § 682.402(c)(8) and either submit the request to the Department or return the claim to the lender within 45 days after the claim was filed, and must pay the claim or return the claim to the lender within 45 days after being notified by the Department of the veteran's eligibility or ineligibility for discharge.

Consolidation Loans (§ 682.201(e))

Comment: One commenter asked that the regulations clarify which FFEL Program loans are eligible for the Direct

Loan Program's no accrual of interest benefit for active duty military service members after a FFEL borrower consolidates the loans into the Direct Loan Program. The commenter believed the language in the proposed regulations did not adequately address this issue and suggested that the regulations be amended to include the clarifying language contained in the Department's Stafford Loan Master Promissory Note (MPN).

Discussion: The Department agrees with the commenter that the regulatory language defining which loans are eligible for the no accrual of interest benefit should be clarified and that it is appropriate to use the Stafford Loan MPN language as a model. The Stafford Loan MPN informs borrowers that a FFEL Program loan that was first disbursed on or after October 1, 2008, including a Federal Consolidation Loan that repaid FFEL or Direct Loan program loans first disbursed on or after October 1, 2008, may be consolidated into the Direct Loan Program to take advantage of the no accrual of interest benefit for active duty military service members, and explains that no interest will be charged on the portion of the new Direct Consolidation Loan that repaid FFEL or Direct Loan program loans first disbursed on or after October 1, 2008 during periods of qualifying active duty military service (for up to 60 months). A Federal Consolidation Loan that repaid some loans that were first disbursed on or after October 1, 2008 and other loans that were first disbursed before that date may be consolidated into the Direct Loan Program to take advantage of the no accrual of interest benefit, but the benefit will apply only to the portion of the Direct Consolidation Loan that is attributable to the loans repaid by the Federal Consolidation Loan that were first disbursed on or after October 1, 2008.

Changes: Section 682.201(e)(5) has been revised to include language specifying that FFEL Program loans first disbursed on or after October 1, 2008 (including Consolidation loans that repaid FFEL or Direct loans first disbursed on or after October 1, 2008) are eligible for the no accrual of interest benefit when included in a Federal Direct Consolidation Loan.

In-School Deferments for PLUS Loans (§ 682.210)

Comment: One commenter raised an issue concerning proposed § 682.210(v)(1)(ii), which provides that if a lender grants an in-school deferment on a student PLUS loan first disbursed on or after July 1, 2008 based on enrollment information that confirms the borrower's eligibility for the deferment, the deferment period includes the additional 6-month post-enrollment deferment period that begins when the student ceases to be enrolled on at least a half-time basis. The commenter believed that the regulations should not specify the operational method by which a lender processes a deferment, and recommended that the regulatory language be revised to provide that a lender may process the 6-month post-enrollment deferment as either an extension of the in-school deferment period, or a separate deferment period that begins when the student ceases to be enrolled at least half time.

Discussion: The regulatory language stating that the deferment period ''includes'' the 6-month post-enrollment deferment is intended to clarify that if a lender grants an in-school deferment on a student PLUS loan first disbursed on or after July 1, 2008 based on enrollment status information, the 6-month post enrollment deferment may be granted without a separate request from the borrower. The regulatory language does not dictate the operational details of how a lender processes the post-enrollment deferment.

Changes: None.

Deferment (§§ 682.210 and 682.204)

Comment: One commenter raised an issue concerning the discussion of proposed § 682.210(a)(3)(ii) in the preamble to the NPRM. This provision requires a FFEL Program lender, at or before the time a deferment is granted to a borrower who is responsible for paying the interest on a loan during the deferment, to notify the borrower of certain information, including the borrower's option to pay the interest that accrues during the deferment or to cancel the deferment and continue paying on the loan. The Department stated in the preamble that a comparable change would be made to § 685.204(b)(1)(iii)(B)(*2*) to provide that Direct Loan borrowers will be notified of their right to cancel a deferment and continue paying on the loan. The commenter noted, however, that the corresponding Direct Loan provision does not specifically say that borrowers will be notified of the option to pay the accruing interest during a deferment period, and recommended that this be added to ensure that Direct Loan borrowers receive the same information as FFEL borrowers.

Discussion: Regulations are issued to govern the activities of third parties; in general, the Secretary does not issue regulations to control the Department's activities. Direct Loan Program borrowers are notified of their option to pay the interest that accrues during a deferment on the Direct Loan Program deferment request forms and in the correspondence borrowers receive when a deferment is granted.

Changes: None.

Comment: Several commenters raised a concern about language in the preamble to the NPRM that describes the requirement for a lender to inform a borrower, at or before the time a deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue to pay on the loan. The commenters noted that, during the negotiated rulemaking process, the Department agreed that it would be helpful for a borrower to receive this information at the time of application for the deferment, and that including the required information in the Department-approved, standardized deferment forms would satisfy the notification requirement. The commenters were concerned that the discussion in the preamble could be misinterpreted to suggest that a lender must provide the information both at the time the borrower requests the deferment and at the time the lender grants the deferment.

Discussion: The Department did not intend to imply a change in the meaning of the language in the regulations through the preamble discussion. As stated in § 682.210(a)(3)(ii), the lender may provide the required information ''at or prior to the time the deferment is granted.'' Providing the required information to the borrower as part of the standardized deferment application at the time the borrower requests the deferment satisfies the regulatory notification requirement. The lender may, but is not required to, also provide the information at the time the deferment is granted.

Changes: None.

Income-Based Repayment (IBR) Plan

Comment: Some commenters praised the Department for proposing changes to the IBR regulations to address the calculation of partial financial hardship for borrowers whose outstanding loan balances increase rather than decrease while they repay their loans under another repayment plan prior to requesting IBR, and for married borrowers who file joint tax returns with the IRS and who both have eligible education loans. One commenter noted, however, that the Department had amended the Direct Loan regulations to allow a borrower who wants to repay a defaulted FFELP loan with a Direct

Consolidation Loan to agree to pay the Direct Consolidation Loan under the IBR Plan, but did not make a comparable change in § 682.201(d)(1)(i)(A). The commenter requested that a technical correction be made to insert a reference to IBR in the corresponding FFEL provision so that comparable terms and conditions apply to borrowers in both programs.

Discussion: The commenter is correct that this change should be reflected in the FFEL Program regulations. The Department agrees that comparable terms and conditions should apply for this purpose for borrowers in both the FFEL and Direct Loan programs.

Changes: Section 682.201(d)(1)(i)(A) has been revised to provide that a borrower may consolidate a defaulted loan if he or she agrees to repay the FFEL Consolidation loan under either the income-sensitive repayment plan or the income-based repayment plan.

FFEL and Direct Loan Program Teacher Loan Forgiveness (§§ 682.216 and 685.217)

Comment: One commenter noted that under the proposed regulations, an educational service agency is considered an eligible educational service agency for teacher loan forgiveness purposes only if the agency meets the same eligibility requirements as elementary and secondary schools under current regulations, including the requirement to be listed in the Department's Annual Directory of Designated Low-Income Schools (Low-Income School Directory). The commenter asked for clarification as to whether an otherwise eligible teacher who is employed by an educational service agency that is not listed in the Low-Income School Directory would qualify for teacher loan forgiveness if the teacher taught for five complete, consecutive academic years at an elementary or secondary school that is included in the Low-Income School Directory.

Discussion: The proposed regulations allow a teacher to qualify for loan forgiveness if he or she is employed as a full-time teacher for five consecutive complete academic years at an eligible elementary or secondary school or by an eligible educational service agency, and meets the other eligibility requirements of the teacher loan forgiveness program. An otherwise eligible teacher who is employed by an educational service agency, but who teaches at a low-income elementary or secondary school that is not operated by the educational service agency, may qualify for loan forgiveness if either the educational service agency or the school where the individual performs qualifying teaching service is listed in the Low-Income School Directory.

Changes: None.

Comment: One commenter asked for clarification as to who the appropriate certifying official would be for purposes of certifying the loan forgiveness application of a ''traveling'' teacher who, as discussed in the preamble to the NPRM, does not have a fixed location of employment, but instead performs qualifying teaching service at multiple eligible schools or eligible educational service agencies, and who may not actually be employed by the schools or educational service agencies where he or she teaches. The commenter believed that the reference in the NPRM to not having a fixed location of employment would imply that a traveling teacher is an independent contractor who is not actually employed by any school or educational service agency.

Discussion: In the preamble to the NPRM, the Department indicated that ''traveling'' teachers who do not have a fixed location of employment, but who perform qualifying teaching service at multiple eligible elementary or secondary schools, or at multiple eligible educational service agencies, may (if otherwise eligible) qualify for teacher loan forgiveness even though they are not employees of the schools or educational service agencies where they teach. The reference to not having a fixed location of employment was not intended to suggest that a traveling teacher would be an independent contractor. A traveling teacher may be an employee of a particular school, school district, or educational service agency and provide teaching services at various schools or locations operated by educational service agencies. For purposes of certifying such a teacher's loan forgiveness application, the certifying official must be someone who has access to employment records that establish the teacher's eligibility for loan forgiveness, and who is authorized to verify the teacher's qualifying employment. The appropriate certifying official may vary depending on individual employment circumstances. The certifying official could be someone at the borrower's actual employer, or someone at the location where the borrower performed the qualifying teaching service.

Changes: None.

Comment: Several commenters stated that there appears to be a conflict between the preamble of the NPRM and the proposed regulatory language with regard to the conditions under which qualifying teaching service performed at an eligible educational service agency prior to the date of enactment of the HEOA may be counted toward the required five complete consecutive years of teaching service. The preamble states that the required five complete consecutive years may include any combination of teaching at eligible elementary or secondary schools or eligible educational service agencies, but that teaching at an educational service agency may be counted toward the five years only if the consecutive five years includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year. The proposed regulatory language in §§ 682.216(a)(2) and 685.217(a)(2) states that for teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

The commenters noted that the regulatory requirement for ''at least one'' of the complete academic years to have been after the 2007–2008 academic year could be interpreted to mean that for any years of teaching at an eligible educational service agency prior to the enactment of the HEOA to count toward the required five consecutive years, a borrower must have completed a full year of teaching at an eligible educational service agency after the 2007–2008 academic year. They believed this approach would be contrary to the agreement reached during the negotiated rulemaking process and the preamble to the NPRM. The commenters interpreted the preamble language to mean that qualifying teaching service performed by an employee of an educational service agency prior to the enactment of the HEOA would count toward the required five consecutive years as long as the five-year period includes any period of qualifying teaching at an eligible educational service agency after the 2007–2008 academic year, even if the qualifying service at an educational service agency after the 2007–2008 academic year is less than a full academic year. For example, the preamble language would allow a borrower who performed qualifying teaching service at an eligible educational service agency for four complete consecutive academic years from 2004–2005 through 2007–2008 to count those years toward the required five consecutive years if, during the 2008–2009 academic year, the borrower taught for half of the year at an eligible educational service agency and the other half of the year at an eligible elementary or secondary school. The

commenters recommended that proposed § 682.216(a)(2) be revised to reflect the language in the preamble.

Discussion: Proposed § 682.216(a)(2) was intended to be consistent with the preamble to the NPRM regarding the eligibility of teaching service performed by an employee of an educational service agency prior to the date of enactment of the HEOA. However, the Department agrees with the commenters that the regulatory language could be misinterpreted.

Changes: Sections 682.216(a)(2) and 685.217(a)(2) have been revised to reflect the language in the preamble to the NPRM. Conforming changes have also been made in §§ 682.216(c)(3)(iii) and (c)(4)(iii), and 685.217(c)(3)(iii) and (c)(4)(iii).

Eligibility for Rehabilitation of Defaulted FFEL and Direct Loans (§§ 682.405(a) and (b)(1)(iii) and 685.211(f))

Comment: One commenter agreed with the Department's interpretation that the limit on rehabilitation of defaulted loans to one opportunity applies to each loan, but requested further clarification on the application of the limit. The commenter asked whether a borrower who successfully rehabilitates a defaulted loan, consolidates that loan, and then subsequently defaults on the consolidation loan would be eligible to rehabilitate the consolidation loan. The commenter believed the borrower should be eligible to rehabilitate the consolidation loan because the previously rehabilitated loan was in good standing when it was consolidated.

Discussion: A consolidation loan is a new loan. In the commenter's example, the borrower's previously rehabilitated loan was paid in full through the consolidation process and has no bearing on the borrower's eligibility for rehabilitation of the consolidation loan. The Department agrees that the borrower is eligible to rehabilitate the defaulted consolidation loan, but does not believe it is necessary to separately address the treatment of consolidation loans in the regulations.

Changes: None.

Definition of Lender (§ 682.200(b))

Comment: One commenter asked whether the term ''other group'' in paragraph (5)(i)(A)(6) of the prohibited inducement provisions of the proposed definition of ''lender'' includes a lender's board of directors. The commenter asked the Department to clarify that a lender's board of directors would be covered by the prohibition even if the Department decided not to define the term.

Discussion: The term ''other group'' is not defined in the HEA. The Department agrees, however, that service on a lender's board of directors is one of the groups established by a lender that would be covered under the provision. The Department declines to define the term ''other group'' and does not believe it is possible to provide an all-inclusive listing of the possible types of groups a lender may establish that would be covered by the prohibition.

Changes: None.

Lender Disclosures (§ 682.205)

Comment: One commenter raised concerns about the number of new and revised borrower disclosures that lenders must provide under proposed § 682.205. The commenter indicated that his organization would need substantial time to prepare the disclosures, train its staff, and make necessary data processing changes to implement the regulations. The commenter requested that the Department extend the effective date of the lender disclosure provisions to one year after the final regulations are issued.

Discussion: The Department notes that the new and revised borrower disclosures included in the proposed regulations are required as a result of the enactment of the HEOA and became effective in most cases on August 14, 2008. Lenders are expected to comply with the requirements to the extent possible until these implementing regulations become effective on July 1, 2010. The Department believes that providing information to borrowers, particularly those who are having difficulty making payments or who are past due on their payments, is critical, and therefore declines to delay the July 1, 2010, effective date of these implementing regulations.

Changes: None.

Comment: Several commenters requested a change to § 682.205(c)(4) of the proposed regulations, which describes the information that must be provided to borrowers who contact their lenders indicating that they are having difficulty making their payments. The commenters were concerned that sending the required information repeatedly to a borrower if the borrower contacts the lender more than once over a short period of time would be ineffective and could confuse the borrower. The commenters requested that the Department require the lender to send the disclosure only if the lender had not sent one to the borrower within the previous 120 days. The commenters believed that this change would be comparable to a change agreed to during the negotiations related to the frequency of the required disclosure for borrowers who fall 60 days behind in making payments. The Department agreed that, in that situation, it was not beneficial to send multiple disclosures to a borrower who was rolling in and out of a 60-day delinquency status and, as a result, the proposed regulations do not require a lender to continue to send the 60-day delinquency disclosure if one was sent to the borrower within the previous 120 days.

Discussion: The Department does not agree that the disclosure required under § 682.205(c)(4) when a borrower contacts the lender indicating he or she is having difficulty making payments is comparable to the disclosure of information in the 60-day delinquency situation. The 60-day delinquency disclosure is automatically triggered by the borrower's delinquency status and is in addition to other lender due diligence contacts with the borrower required under § 682.411 of the FFEL regulations. In the case of a borrower having difficulty making payments, the borrower triggers the disclosure by contacting the lender and requesting assistance. Under these circumstances, we believe a lender has a responsibility and an obligation to assist the borrower by providing information as frequently as necessary to assist that borrower. The Department disagrees that the situations are comparable and declines to make the change requested by the commenters.

Changes: None.

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 Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, 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

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to changes related to loan discharge, deferment, consolidation, rehabilitation, and repayment plan provisions, and the addition of a new Part E to title I of the HEA, which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, these final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or provide additional clarity. Other changes, such as the requirement that lenders rather than guaranty agencies notify veterans whose loans have been discharged that their obligation to make any further payments has been discharged, were made to simplify and standardize program operations. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, benefits provided in these proposed regulations include greater transparency for borrowers participating in the Federal and private student loan programs; clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs; improvements to the IBR plan, particularly for married borrowers; a simpler process for obtaining loan discharges due to total and permanent disability; and expanded eligibility for Teacher Loan forgiveness benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the HEOA or of the harm such relationships actually caused for either borrowers, institutions, or the Federal taxpayer. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these proposed provisions result in net costs to the government of $192.7 million over 2009–2013.

Costs

As discussed extensively in the *Regulatory Impact Analysis* in the NPRM, many of the statutory provisions implemented though these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to the process for loan discharges, IBR, and various deferment and forbearance benefits—rather than wholly new requirements. In total, these changes are estimated to increase burden on entities participating in the FFEL program by 1,313,964 hours. Of this increased burden, 1,184,115 hours are associated with lenders, 110,360 hours with guaranty agencies, and 7,200 hours with institutions. An additional 12,289 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information.

For lenders, over half of the additional burden—798,000 hours—is related to the requirement to provide additional disclosures to borrowers who are over 60 days delinquent or are otherwise having trouble making repayments. Another 216,000 hours are associated with new requirements related to the provision of administrative forbearances. Roughly 90,000 hours in new burden are related to changes in the methodology for calculating income-based repayments. The balance of additional burden is spread across a number of minor changes made by these regulations.

For guaranty agencies, virtually the entire additional burden relates to new requirements to provide information to borrowers who are in default or have rehabilitated their loans after being in default. Other minor additional burden for guaranty agencies results from new requirements to provide consumer information.

The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $24,334,225, of which $21.95 million is associated with lenders, $2.05 million with guaranty agencies, $0.2 million with borrowers, and $0.13 million with schools. Given the large number of entities affected by these provisions, actual burden on individual entities is not substantial.

Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. No comments or additional data were received.

Net Budget Impacts

As discussed more fully in the *Regulatory Impact Analysis* of the NPRM, HEOA provisions implemented by these regulations are estimated to have a net budget impact of $34.7 million in 2009 and $192.7 million over FY 2009–2013. (The estimated impact for 2009 does not include $144.2 million in costs related to loans originated in prior fiscal years.) 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.)

The budgetary impact of these regulations is largely driven by statutory changes involving teacher loan forgiveness, loan discharges, and IBR. The Department estimates no budgetary impact for other provisions included in these regulations; there is no data indicating that the new requirements related to improper inducements and additional loan disclosures will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

As noted in the NPRM, because these 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 HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including data from the NSLDS; operational and financial data from Department 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.

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

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 expanded loan discharges, teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$57.
From Whom To Whom?	Federal Government to Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These 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 institutions and lenders 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 small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 1,200 institutions participating in the FFEL program meet the definition of ''small entities.'' Institutional burden stemming from these regulations is associated with audit requirements for schools serving as lenders. Institutions meeting the definition of small entities are extremely unlikely to act as lenders in the FFEL program. Accordingly, new requirements imposed under these regulations are not expected to impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. Lenders of this size are extremely unlikely to engage in the type of activities—inducements, *etc.*—governed by these regulations. Accordingly, the Department has determined that the regulations did not represent a significant burden on small lenders.

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. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

In the NPRM, the Secretary invited comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them. No comments were received.

Paperwork Reduction Act of 1995

Sections 674.61, 682.202, 682.205, 682.206, 682.208, 682.210, 682.211, 682.216, 682.302, 682.305, 682.401, 682.402, 682.410, 682.601, 685.202, 685.204, 685.205, 685.213, and 685.217 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.61, 682.402, and 685.213—Total and Permanent Disability Loan Discharges

The final regulations revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on a total and permanent disability. The changes to the loan discharge process affect borrowers, loan holders (and their servicers), and guaranty agencies.

The burden hour estimate associated with the current total and permanent disability loan discharge provisions is reported under OMB Control Number 1845–0065 (Discharge Application: Total and Permanent Disability). The Department does not expect these changes to increase the burden for this collection. However, the Department will need to revise the Discharge Application: Total and Permanent Disability currently approved under 1845–0065 to reflect these final regulations. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.

In response to public comments, the Department revised § 682.402(c)(8)(ii)(F) to specify that upon receipt of a claim payment from the guaranty agency (after the Department has notified the guaranty agency that a borrower is eligible for a discharge under the separate discharge process for certain veterans), the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged. Under the proposed regulations, the guaranty agency would have been responsible for notifying the veteran of the discharge. This change from the proposed regulations has no effect on burden for lenders or guaranty agencies, as it simply makes the borrower notification process under the special discharge procedures for veterans consistent with the general discharge procedures for other borrowers and the notification requirements under existing regulations.

Section 682.206—Consolidation Loans

The final regulations revise § 682.206(f) to incorporate a new requirement that is needed to fully implement proposed § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to take the loan. Specifically, § 682.206(f) is revised to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The final regulations require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

We estimate that these changes will increase burden for borrowers by 10,032 hours and for loan holders (and their servicers) by 54,552 hours for a total increase in burden of 64,584 hours in OMB Control Number 1845–0020.

Sections 682.210, 682.211, 685.204 and 685.205—In-School Deferments and Administrative Forbearance for PLUS Loans

The final regulations revise §§ 682.210 and 685.204 to reflect statutory deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008. Upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the final regulations provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from NSLDS confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The final regulations also add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment of the loans with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford loans that are subject to a grace period. The lender is required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision will be added to § 685.205(b) in the Direct Loan Program regulations.

The changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The new deferment provisions for certain PLUS borrowers are expected to increase the number of borrowers who apply for deferments. Because these statutory provisions could be implemented without regulations, the FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL Program Deferment Request Forms) and 1845–0011 (Direct Loan Program Deferment Request Forms). The increased burden associated with the final regulatory changes is reflected in the burden estimates reported under those control numbers.

We estimate that the final regulations in § 682.211(e) related to administrative forbearances will increase burden for loan holders by 14,440 hours in OMB Control Number 1845–0020.

Sections 682.215 and 685.221—Income-Based Repayment (IBR) Plan

The final regulations revise the definition of partial financial hardship in § 682.215(a)(4) and 685.221(a)(4) to specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans when the borrower initially entered repayment on those loans, or the amount due on those loans when the borrower elects the IBR plan. The final regulations also provide that when a married borrower and his or her spouse file a joint Federal tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

The final regulations revise §§ 682.215(b)(1) and 685.221(b)(2) to provide that if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with all other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders.

We estimate that the final regulations will increase burden for loan holders by 90,286 hours in OMB Control Number 1845–0020.

Sections 682.202, 682.302, and 685.202—Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans

The final regulations revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The final regulations

would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that, for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, the FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

We estimate that the final regulations will increase burden for borrowers by 1,694 hours and for loan holders by 542 hours in new OMB Control Number 1845–XXX1. We estimate that the final regulations will increase burden for borrowers by 563 hours in new OMB Control Number 1845–XXX2.

Sections 682.210 and 685.204—In-School Deferment

The final regulations revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender is also required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments is removed from § 682.210(c)(2) of the FFEL regulations. A comparable change is made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

The changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The FFEL and Direct Loan deferment request forms currently approved under OMB Control Numbers 1845–0005 and 1845–0011 already include the information that a loan holder must provide to a borrower at or before the time a deferment is granted, as described above. Therefore, there is no increase in burden associated with the final regulations.

Sections 682.216 and 685.217—FFEL and Direct Loan Program Teacher Loan Forgiveness

The final regulations allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more eligible elementary or secondary schools that serve low-income families, or one or more eligible educational service agencies that serve low-income families. A borrower can also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible for teacher loan forgiveness purposes, an educational service agency has to meet the same eligibility requirements that apply to elementary and secondary schools.

These changes will increase the number of borrowers who are eligible for teacher loan forgiveness, and will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application that is currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.

Section 682.205—Disclosure Requirements for Lenders

The final regulations reorganize and expand § 682.205 to reflect new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and requires new disclosures at differing points in the borrower's repayment cycle. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

We estimate that the final regulations will increase burden for loan holders (and their servicers) by 797,661 hours in OMB Control Number 1845–0020.

Section 682.208—Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan

The final regulations incorporate three additional information items specified in the HEA that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent. The three additional data items are: (1) The effective date of the assignment or transfer of the loan; (2) the date on which the current loan servicer will cease accepting payments; and (3) the date on which the new loan servicer will begin accepting payments. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Loan holders are already required, under current regulations, to provide certain information to a borrower if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send payments. The final regulations merely add three additional items to the notice that a loan holder is already required to provide. Therefore, the Department believes that the final regulations will not significantly increase burden for loan holders (and their servicers) in OMB Control Number 1845–0020.

Section 682.211—Forbearance

Section 682.211(e) of the final regulations requires the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The final regulations also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under existing regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

We estimate that the final regulations will increase burden for loan holders (and their servicers) by 215,734 hours in OMB Control Number 1845–0020.

Sections 682.305 and 682.601—Audit Requirements for a FFEL School Lender or an Eligible Lender Trustee (ELT)

The final regulations revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The final regulations also require that the audit be conducted by a qualified, independent organization or person. Section 682.305(c)(2)(vii) governs the compliance audit of a school or school-affiliated organization lender trustee. The final regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for

need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The final regulations also require that the audit determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

We estimate that the final regulations will increase burden for institutions by 7,200 hours and for loan holders (and their servicers) by 10,900 hours for a total increase in burden of 18,100 hours in OMB Control Number 1845–0020.

Section 682.401—Consumer Education Information Provided by Guaranty Agencies

The final regulations require a guaranty agency to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

We estimate that the final regulations will increase burden for institutions and guaranty agencies by 8,748 hours in OMB Control Number 1845–0020.

Section 682.405—Financial and Economic Literacy for Rehabilitated Borrowers

The final regulations revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

We estimate that the final regulations will increase burden for guaranty agencies by 24,427 hours in OMB Control Number 1845–0020.

Section 682.405—Consumer Credit Reporting Following Loan Rehabilitation

If a borrower successfully rehabilitates a previously defaulted loan, the final regulations require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The final regulations also provide more detailed reporting deadlines for the guaranty agency and prior loan holder to request removal of the report of the default from the borrower's credit history, and reduce the overall period for this activity from 90 to 75 days.

We estimate that the final regulations will increase burden for guaranty agencies by 18,392 hours in OMB Control Number 1845–0020.

Section 682.410—Notifications to Borrowers in Default

The final regulations expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The final regulations also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice has to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

We estimate that the final regulations will increase burden for guaranty agencies by 58,793 hours in OMB Control Number 1845–0020.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department submitted to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
674.61, 682.402, and 685.213.	The final regulations revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on total and permanent disability. Borrowers who apply for a total and permanent disability discharge must complete a discharge application that collects the information needed to determine their eligibility for discharge.	OMB 1845–0065. The Discharge Application: Total and Permanent Disability that is currently approved under 1845–0065 will be revised to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.
682.206	§ 682.206(f) is amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan.	OMB 1845–0020. There will be an increase in burden of 64,584 hours.
682.210, 682.211, 685.204 and 685.205.	The final regulations implement the new deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008 that were added to the HEA by the HEOA. A loan holder must collect the information needed to determine that a borrower is eligible for a deferment.	OMB 1845–0005, 1845–0011 and 1845–0020. The FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL) and 1845–0011 (Direct Loan). There will be an increase in burden of 14,440 hours in OMB 1845–0020.

Regulatory section	Information collection	Collection
682.202, 682.302, and 685.202.	The final regulations provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status.	OMB 1845–XXX1 and 1845–XXX2. These are new collections. A separate 60-day **Federal Register** Notice has been published to solicit comments. In OMB 1845–XXX1 there will be an increase in burden of 2,236 hours. In OMB 1845–XXX there will be an increase in burden of 563 hours.
682.210 and 685.204	The final regulations require a loan holder to provide information about interest capitalization to a borrower prior to or at the time of granting a deferment on an unsubsidized loan.	OMB 1845–0005 and 1845–0011. These collections (FFEL and Direct Loan Program deferment request forms) were previously revised to include the required information about interest capitalization and have been approved by OMB.
682.215 and 685.221	The final regulations revise the definition of partial financial hardship for purposes of determining a borrower's eligibility for the income-based repayment plan and would also revise the provisions governing a loan holder's calculation of a borrower's income-based payment amount.	OMB 1845–0020. There will be an increase in burden of 90,286 hours.
682.216 and 685.217	The final regulations expand eligibility for teacher loan forgiveness to allow a borrower who otherwise meets the loan forgiveness eligibility requirements to receive forgiveness based on teaching service performed at one or more eligible educational service agencies that serve low-income families.	OMB 1845–0059. The final regulations require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.
682.205	The final regulations implement new statutory requirements for lenders to disclose certain information to borrowers at various points during the lifecycle of a borrower's loan. The proposed regulations also add new lender disclosure requirements for consolidation loan borrowers.	OMB 1845–0020. There will be an increase in burden of 797,661 hours.
682.208	The final regulations incorporate three additional information items that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent.	OMB 1845–0020. There will be no change in burden hours.
682.211	The final regulations require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total to be repaid over the life of the loan.	OMB 1845–0020. There will be an increase in burden of 215,734 hours.
682.305 and 682.601	The final regulations amend § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated.	OMB 1845–0020. There will be an increase in burden of 181,100 hours.
682.401	The final regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs to provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.	OMB 1845–0020. There will be an increase in burden of 8,748 hours.
682.405	The final regulations require guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans.	OMB 1845–0020. There will be an increase in burden of 24,427 hours.
682.405	The final regulations require the prior holder of a previously defaulted loan, in addition to the guaranty agency, to request that consumer reporting agencies remove the record of the default from the borrower's credit history after the borrower has successfully rehabilitated the loan.	OMB 1845–0020. There will be an increase in burden of 18,392 hours.
682.410	The final regulations require guaranty agencies to provide certain additional notifications to borrowers who are in default.	OMB 1845–0020. There will be an increase in burden of 58,793 hours.

Assessment of Educational Impact

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

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(Catalog of Federal Domestic Assistance Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 673, 674, 682, and 685

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

Dated: October 15, 2009.

Arne Duncan,

Secretary of Education.

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

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

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

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

■ 2. Section 673.5(c) is amended by:

■ A. Revising paragraph (c)(1)(v).

■ B. In paragraph (c)(1)(vi), removing the words ''and ROTC scholarships''.

■ C. Revising paragraph (c)(1)(ix).

■ D. In paragraph (c)(2)(iii), removing the word ''and'' immediately after the semicolon at the end of the paragraph.

■ E. In paragraph (c)(2)(iv), removing the words ''this part'' and adding, in their place, the words ''a title IV, HEA program,'' and removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.

■ F. Adding a new paragraph (c)(2)(v).

■ G. Adding a new paragraph (c)(2)(vi).

■ H. In paragraph (c)(3), removing the words ''veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill-Active Duty) and''.

The revisions and additions read as follows:

§ 673.5 Overaward.

(c) * * *

(1) * * *

(v) Grants, including FSEOGs, State grants, Academic Competitiveness Grants, and National SMART Grants;

* * * * *

(ix) Except as provided in paragraph (c)(2)(v) of this section, veterans' education benefits;

* * * * *

(2) * * *

(v) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(vi) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 3. 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.

■ 4. Section 674.9 is amended by:

■ A. Revising paragraph (g).

■ B. In the introductory text of paragraph (h), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

■ C. In paragraph (h)(1), removing the words ''paragraphs (h)(1) and (h)(2)'' and adding, in their place, the words ''paragraphs (g)(1) and (g)(2)''.

■ D. In paragraph (h)(2)(ii), removing the words '', as described in § 674.61(b)(9)'' immediately after the word ''period''.

■ E. In the second sentence of paragraph (i), removing the words ''described in §§ 674.61(b), 682.402(c), or 685.213(a)'' immediately after the word ''period''.

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(g) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged

in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower receives a new Federal Perkins Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 674.61(b)(3)(i), 34 CFR 682.402(c), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 674.61(b)(5), 34 CFR 682.402(c)(5), or 34 CFR 685.213(b)(4), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

■ 5–6. Section 674.61 is amended by:
■ A. Revising paragraph (b).
■ B. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.
■ C. Adding a new paragraph (c).

The revision and addition read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1)—*

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

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(1), a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

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

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

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

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

(*3*) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(5) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

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

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

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

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

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

(C) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior

to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

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

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

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

(iii) The Secretary's notification under paragraph (b)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

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

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

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(5)(i) of this section, the borrower or, if applicable, the borrower's representative—

(i) Must promptly notify the Secretary of any changes in address or phone number;

(ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(5)(i)(A) of this section; and

(iii) Must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan prior to the Secretary's determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician certified the borrower's loan discharge application to the person who made the payments on the loan.

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

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(2), a veteran must submit a discharge application approved by the Secretary to the institution that holds the loan.

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

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

(A) The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2);

(B) The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2); and

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in § 674.61(b).

(iv) If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.

(v) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must resume collection on the loan.

(3) *Secretary's determination of eligibility*. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must—

(A) Discharge the veteran's obligation to make further payments on the loan; and

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

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must resume collection on the loan.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

■ 8. Section 682.200(b) is amended by:

■ A. In the definition of ''Estimated financial assistance,'' revising paragraphs (1)(i) and (ii).

■ B. In the definition of ''Estimated financial assistance,'' removing

paragraphs (1)(iii) and (iv), and redesignating paragraphs (1)(v), (vi), (vii), and (viii) as paragraphs (1)(iii), (iv), (v), and (vi), respectively.

■ C. In paragraph (2)(i) of the definition of ''Estimated financial assistance,'' removing the word ''is'' in the second sentence and adding, in its place, the words ''must be''.

■ D. In paragraph (2)(iii) of the definition of ''Estimated financial assistance,'' removing the words ''veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and''.

■ E. In paragraph (2)(v) of the definition of ''Estimated financial assistance,'' removing the word ''and'' after the semicolon at the end of the paragraph.

■ F. In paragraph (2)(vi) of the definition of ''Estimated financial assistance,'' removing the words ''this title'' in the first sentence and adding, in their place, the words ''a title IV, HEA program'', and removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.

■ G. In the definition of ''Estimated financial assistance,'' adding new paragraphs (2)(vii) and (viii).

■ H. Revising paragraph (5) of the definition of ''Lender.''

■ I. Removing the definition of ''National credit bureau.''

■ J. Adding a definition of ''Nationwide consumer reporting agency.''

■ K. Adding a definition of ''Substantial gainful activity.''

■ L. Revising the definition of ''Totally and permanently disabled.''

The revisions and additions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Estimated financial assistance. (1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

* * * * *

(2) * * *

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

Lender. * * *

(5)(i) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any individual or entity in order to secure applications for FFEL loans or FFEL loan volume. This includes but is not limited to—

(*1*) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower or to a school or school employee in exchange for applying for or accepting a FFEL loan from the lender;

(*2*) Payments or other benefits, including payments of stock or other securities, tuition payments or reimbursements, to a school, a school employee, any school-affiliated organization, or to any other individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(*3*) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and discloses that employment to school administrators and to prospective borrowers;

(*4*) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

(*5*) Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or its employees, of referral fees, finder fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(*6*) Compensation to an employee of a school's financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender's advisory board, commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service;

(*7*) Payment of conference or training registration, travel, and lodging costs for an employee of a school or school-affiliated organization;

(*8*) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(*9*) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or

a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders;

(*10*) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling as provided in § 682.604(f) and exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(*11*) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions or to family members of such students, except to a student or borrower who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Technical assistance to a school that is comparable to the kinds of technical assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, including in-person entrance and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with § 682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the **Federal Register**.

(iii) For the purposes of this paragraph (5)—

(A) The term ''school-affiliated organization'' is defined in § 682.200.

(B) The term ''applications'' includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL Consolidation loan application and promissory notes.

(C) The term ''other benefits'' includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency as defined in 15 U.S.C. 1681a.

* * * * *

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

* * * * *

Totally and permanently disabled. The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

* * * * *

■ 9. Section 682.201 is amended by:

■ A. In paragraph (a)(4)(i), removing the words ''legal costs, and late charges'' and adding, in their place, the words ''court costs, attorney fees, and late charges''.

■ B. In paragraph (a)(5), removing the words ''under § 682.402(c)''.

■ C. In the introductory text of paragraph (a)(6), adding the words ''or whose TEACH Grant service obligation'' immediately after the word ''Act''.

■ D. Revising paragraph (a)(6)(iii).

■ E. In the introductory text of paragraph (a)(7), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

■ F. In paragraph (a)(7)(ii)(B), removing the words '', as described in paragraph 682.402(c)(16)''.

■ G. In paragraph (d)(1)(i)(A)(3), adding the words ''or the income-based repayment plan described in § 682.215'' immediately after the reference ''§ 682.209(a)(6)(iii)''.

■ H. In paragraph (e)(4), adding the words ''is in default or'' immediately after the first appearance of the words ''consolidation loan'' and adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

■ I. Revising paragraph (e)(5).

The revisions read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(6) * * *

(iii) If a borrower receives a new FFEL loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(i), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in

accordance with § 682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

(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—

(i) The Public Service Loan Forgiveness Program; or

(ii) For FFEL Program loans first disbursed on or after October 1, 2008 (including Federal Consolidation Loans that repaid FFEL or Direct Loan program Loans first disbursed on or after October 1, 2008), the no accrual of interest benefit for active duty service members.

■ 10. Section 682.202 is amended by:

■ A. In the introductory text of paragraph (a), adding the words ''and (a)(8)'' after the reference ''(a)(4)''.

■ B. Adding a new paragraph (a)(8).

■ C. In paragraph (b)(2)(i), adding the words ''or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins'' immediately before the semicolon.

The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

■ 11. Section 682.204 is amended by:

■ A. Revising paragraph (c)(1).

■ B. Revising paragraph (d) introductory text.

■ C. In paragraph (d)(1)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ D. In paragraph (d)(1)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ E. In paragraph (d)(1)(iii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ F. In paragraph (d)(2)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ G. In paragraph (d)(2)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$,4000''.

■ H. In paragraph (d)(3)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $7,000,'' immediately after ''$5,000''.

■ I. In paragraph (d)(3)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $7,000,'' immediately after ''$5,000''.

■ J. In paragraph (d)(6)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ K. Adding a new paragraph (d)(9).

■ L. Redesignating paragraphs (e)(1) and (e)(2) as paragraphs (e)(2) and (e)(3), respectively.

■ M. Adding a new paragraph (e)(1).

■ N. Revising newly redesignated paragraph (e)(2).

The revisions and additions read as follows:

§ 682.204 Maximum loan amounts.

* * * * *

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(ii) Except for a dependent undergraduate who qualifies for additional Unsubsidized Stafford Loan funds under paragraph (d) of this section in accordance with the conditions specified in § 682.201(a)(3), for a loan first disbursed on or after July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, plus—

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is at one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

* * * * *

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in § 682.201(a)(3) may borrow additional amounts under the Unsubsidized Stafford Loan Program in addition to any amount borrowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section. The additional amount that such a student may borrow for any academic year of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section for certain dependent undergraduate students—

* * * * *

(9) A dependent undergraduate student who qualifies for the additional Unsubsidized Stafford Loan amounts under this section in accordance with the conditions specified in § 682.201(a)(3) is not eligible to receive the additional Unsubsidized Stafford Loan amounts under paragraph (c)(1)(ii) of this section.

(e) * * *

(1) $23,000, or, effective July 1, 2008, $31,000, for a dependent undergraduate student.

(2) $46,000, or, effective July 1, 2008, $57,500, for an independent undergraduate student or a dependent undergraduate student under the conditions specified in § 682.201(a)(3).

* * * * *

■ 12. Section 682.205 is amended by:

■ A. In paragraph (a)(2)(vi), removing the words ''insurance premium'' and adding, in their place, the words ''Federal default fee'', and adding, immediately before the semicolon, the words ''or paid by the lender''.

■ B. In paragraph (a)(2)(ix), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ C. In paragraph (a)(2)(x), adding, immediately before the semicolon, the words '', and a description of the types of repayment plans available''.

■ D. In paragraph (a)(2)(xvi), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ E. In paragraph (a)(2)(xviii), removing the words ''in the making or'' and adding, in their place, the words ''during repayment or in the''; adding the words ''including any fees the borrower may be charged'' immediately after the words ''the loan''; and removing the words ''; and'' at the end of the paragraph and adding, in their place, the punctuation '';''.

■ F. In paragraph (a)(2)(xx), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

■ G. Adding new paragraphs (a)(2)(xxi), (a)(2)(xxii), (a)(2)(xxiii), and (a)(2)(xxiv).

■ H. In paragraph (b), in the second sentence, adding the words '', and that the default will be reported to each nationwide consumer reporting agency'' immediately after the word ''loan''.

■ I. In paragraph (c), in the heading, removing the words ''Disclosure of repayment'' and adding, in their place, the word ''Repayment''.

■ J. In paragraph (c)(1), adding the heading ''Disclosures at or prior to repayment.'' immediately after the paragraph designation ''(1)''; removing the words ''Federal SLS'' and adding, in their place, the words ''Federal PLUS''; and removing the words ''240 days'' and adding, in their place, the words ''150 days''.

■ K. In paragraph (c)(2)(ii), adding the words '', or a deferment under § 682.210(v), if applicable, is to end'' immediately after the word ''begin'' at the end of the sentence.

■ L. In paragraph (c)(2)(iii), adding the words ''a deferment under § 682.210(v), if applicable, is to end,'' immediately after the words ''begin''.

■ M. In paragraph (c)(2)(vi), adding the words ''based on the repayment schedule selected by the borrower'' immediately after the word ''payments''.

■ N. In paragraph (c)(2)(viii), removing the words ''; and'' and adding, in their place, the words '', and if interest has been paid, the amount of interest paid;''.

■ O. In paragraph (c)(2)(ix), removing the punctuation ''.'' at the end of the sentence and adding, in its place, the punctuation ''; ''.

■ P. Adding new paragraphs (c)(2)(x), (c)(2)(xi), (c)(2)(xii), (c)(2)(xiii) and (c)(2)(xiv).

■ Q. Adding new paragraphs (c)(3), (c)(4) and (c)(5).

■ R. In paragraph (d), adding the words ''Federal Unsubsidized Stafford loan or a'' immediately after the words ''In the case of a'' at the beginning of the first sentence; removing the words ''the student'' in the first sentence and adding, in their place, the words ''the borrower or student on whose behalf the loan is made''; and removing the words ''PLUS promissory note'' in the last sentence and adding, in their place, the words ''Stafford and PLUS promissory notes''.

■ S. Adding new paragraph (i).

■ T. Adding new paragraph (j).

The additions read as follows:

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(2) * * *

(xxi) For unsubsidized Stafford or student PLUS borrowers, an explanation that the borrower may pay the interest while in school and, if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized;

(xxii) For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time and, if the parent does not pay interest while the student is in school, when and how often interest will be capitalized, and that the parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time;

(xxiii) A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan; and

(xxiv) A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness.

* * * * *

(c) * * *

(2) * * *

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's total payoff amount and time for repayment;

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit;

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually;

(xiii) A description of the options available to the borrower to avoid or be

removed from default, as well as any fees associated with those options; and

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) *Required disclosures during repayment.* In addition to the disclosures required in paragraph (c)(1) of this section, the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms—

(i) The original principal amount of the borrower's loan;

(ii) The borrower's current balance, as of the time of the bill or statement;

(iii) The interest rate on the loan;

(iv) The total amount of interest for the preceding installment paid by the borrower;

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees;

(viii) The lender's or servicer's address and toll-free telephone number for repayment options, payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education's Web site for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(4) *Required disclosures for borrowers having difficulty making payments.* The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(i) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(ii) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(iii) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(5) *Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.* (i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of—

(A) The date on which the loan will default if no payment is made;

(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

* * * * *

(i) *Separate disclosure for Consolidation loans.* At the time the lender provides a Consolidation loan application to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms—

(1) Whether consolidation will result in a loss of loan benefits, including, but not limited to, loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the Consolidation loan, that the borrower will lose—

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the Consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a Consolidation loan vary among lenders;

(6) The consequences of default on the Consolidation loan; and

(7) That applying for the Consolidation loan does not obligate the borrower to agree to take the Consolidation loan, and the process and deadline by which the borrower may cancel the Consolidation loan.

(j) *Disclosure procedures when a borrower's address is not available.* If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

■ 13. Section 682.206 is amended by revising paragraph (f) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(f) *Additional requirements for Consolidation loans.* (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(A) The loan is a legal, valid, and binding obligation of the borrower;

(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of § 682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower's option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

■ 14. Section 682.208 is amended by:

■ A. In paragraph (e)(1) introductory text, adding the words ''or transfer of ownership interest'' immediately after the word ''assignment''.
■ B. In paragraph (e)(1)(iii), removing the word ''and'' after the semicolon.
■ C. In paragraph (e)(1)(iv), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.
■ D. Adding new paragraphs (e)(1)(v), (vi), and (vii).

The additions read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e) * * *

(1) * * *

(v) The effective date of the assignment or transfer of the loan;

(vi) The date, if applicable, on which the current loan servicer will stop accepting payments; and

(vii) The date on which the new loan servicer will begin accepting payments.

* * * * *

§ 682.209 [Amended]

■ 15. Section 682.209 is amended in paragraph (a)(2)(v) by removing the reference ''(a)(2)(ii)'' and adding, in its place, the reference ''(a)(2)(i)''.
■ 16. Section 682.210 is amended by:
■ A. In paragraph (a)(1)(i), adding the words ''and paragraphs (s) through (v)'' after the words ''paragraph (b)''.
■ B. Revising paragraph (a)(3).
■ C. In paragraph (a)(4), removing the words ''paragraphs (c)(1)(ii) and (iii)'' and adding, in their place, the words ''paragraphs (c)(1)(ii), (iii), and (iv)''.
■ D. In paragraph (c)(1)(ii), removing the word ''or'' at the end of the paragraph.
■ E. In paragraph (c)(1)(iii), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.
■ F. Adding a new paragraph (c)(1)(iv).
■ G. Revising paragraph (c)(2).
■ H. In paragraph (c)(3), removing the word ''SSCR'' and adding, in its place, the words ''Student Status Confirmation Report''.
■ I. Adding a new paragraph (v).

The revisions and additions read as follows:

§ 682.210 Deferment.

(a) * * *

(3)(i) Interest accrues and is paid by—

(A) The Secretary during the deferment period for a subsidized Stafford loan and for all or a portion of a Consolidation loan that qualifies for interest benefits under § 682.301; or

(B) The borrower during the deferment period and, as applicable, the post-deferment grace period, on all other loans.

(ii) A borrower who is responsible for payment of interest during a deferment period must be notified by the lender, at or before the time the deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information, including an example, on the impact of capitalization of accrued, unpaid interest on loan principal, and on the total amount of interest to be paid over the life of the loan.

* * * * *

(c) * * *

(1) * * *

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii), (iii), or (iv) of this section and that the borrower has the option to cancel the deferment and continue paying on the loan.

* * * * *

(v) *In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on § 682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by § 682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

■ 17. Section 682.211 is amended by:
■ A. Revising paragraph (e).
■ B. In paragraph (f)(11), removing the word ''or'' at the end of the paragraph.
■ C. In paragraph (f)(12), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.
■ D. In paragraph (f)(13), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.
■ E. In paragraph (f)(14), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.
■ F. Adding new paragraph (f)(15).

The revisions and additions read as follows:

§ 682.211 Forbearance.

* * * * *

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) * * *

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under § 682.209(a)(3). The notice specified in paragraph (f) introductory text of this section must

inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

■ 18. Section 682.215 is amended by:
■ A. Revising paragraph (a)(4).
■ B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the'' in the second sentence and adding, in their place, the word ''The''.
■ C. In paragraph (b)(1)(i), removing the word ''The'' at the beginning of the paragraph and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the''.
■ D. Redesignating paragraphs (b)(1)(ii) and (b)(1)(iii) as paragraphs (b)(1)(iii) and (b)(1)(iv), respectively.
■ E. Adding a new paragraph (b)(1)(ii).
■ F. In newly redesignated paragraph (b)(1)(iii), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.
■ G. In newly redesignated paragraph (b)(1)(iv), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.
■ H. In paragraph (b)(2), removing the words ''(b)(1)(ii) and (iii)'' in the second sentence and adding, in their place, the words ''(b)(1)(iii) and (iv)''.

The revision and addition reads as follows:

§ 682.215 Income-based repayment plan.

(a) * * *

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

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(1) * * *

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

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

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

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

* * * * *

■ 19. Section 682.216 is amended by:
■ A. Revising paragraph (a).
■ B. In paragraph (b), adding, in alphabetical order, a definition of *Educational service agency*.
■ C. Revising the introductory text of paragraph (c)(1).
■ D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.
■ E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.
■ F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school'' immediately after the words ''teaching and''.
■ G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.
■ H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.
■ I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ K. Adding a new paragraph (c)(3)(iii).
■ L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ O. Adding a new paragraph (c)(4)(iii).
■ P. Revising paragraph (c)(9).
■ Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 682.216 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or at an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * * * *

(3) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(4) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

* * * * *

■ 20. Section 682.302 is amended by adding a new paragraph (h) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(h) *Calculation of special allowance payments for loans subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

■ 21. Section 682.305 is amended by:

■ A. Revising paragraph (c)(1).

■ B. In paragraph (c)(2)(v), removing the word ''and'' immediately after the semicolon.

■ C. In paragraph (c)(2)(vi), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ D. Redesignating paragraph (c)(2)(vii) as paragraph (c)(3).

■ E. Adding a new paragraph (c)(2)(vii).

The revision and addition read as follows:

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

* * * * *

(c) *Independent audits.* (1)(i) A lender originating or holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) Notwithstanding the dollar volume of loans originated or held, a school lender under § 682.601 or a lender serving as trustee on behalf of a school or a school-affiliated organization for the purpose of originating loans must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(iii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

(2) * * *

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that—

(A) Except as provided in paragraph (c)(2)(vii)(B) of this section, the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students; and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with § 682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

* * * * *

■ 22. Section 682.401 is amended by:

■ A. In paragraph (e)(1)(i), adding the words ''stock or other securities, tuition payment or reimbursement'' immediately after the word ''payment'', and by adding the words '', or any individual or entity,'' immediately after the words ''school-affiliated organization'' the second time they appear.

■ B. In paragraph (e)(1)(i)(D), adding the words ''travel or'' immediately after the words ''Payment of''.
■ C. Revising paragraph (e)(1)(i)(F).
■ D. In paragraph (e)(1)(iii)(C), removing the word ''and'' immediately after the semicolon.
■ E. In paragraph (e)(1)(iii)(D), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.
■ F. Adding new paragraphs (e)(1)(iii)(E), (F), and (G).
■ G. In paragraph (e)(1)(v), adding the words '', terms or conditions'' immediately after the word ''availability''.
■ H. In paragraph (e)(2)(i), removing the word ''Assistance'' at the beginning of the paragraph and adding, in its place, the words ''Technical assistance'', and removing the words ''that provided'' and adding, in their place, the words ''the technical assistance provided''.
■ I. In paragraph (e)(2)(ii), adding the words ''and 433A'' immediately after the reference to ''422(h)(4)(B)''.
■ J. In paragraph (e)(2)(iii), removing the word ''excluding'' and adding, in its place, the word ''including'', and removing the word ''initial'' and adding, in its place, the word ''entrance''.
■ K. Revising paragraph (e)(2)(vi).
■ L. In paragraph (e)(3)(iii), removing the words ''The terms'' and adding, in their place, the words ''The term'', and removing the words ''computer hardware'' and adding, in their place, the words ''information technology equipment''.
■ M. Removing paragraph (e)(3)(v).
■ N. Adding a new paragraph (g).

The revision and additions read as follows:

§ 682.401 Basic program agreement.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(F) Performance of, or payment to a third party to perform, any school function required under title IV, except that the guaranty agency may provide entrance counseling as provided in § 682.604(f) and exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.

* * * * *

(iii) * * *

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing payments of stocks or other securities.

* * * * *

(2) * * *

(vi) Reimbursement of reasonable expenses incurred by school employees to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

* * * * *

(g)(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(2) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

■ 23. Section 682.402 is amended by:
■ A. Revising paragraph (c).
■ B. In paragraph (h)(1)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except as provided in paragraph (h)(1)(v) of this section, the''.
■ C. Adding a new paragraph (h)(1)(v).

The revision and addition read as follows:

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

* * * * *

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

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (7) of this section.

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

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied and that the loan is due and payable to the Secretary under the terms of the promissory note.

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

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

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

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

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

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

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

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

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

(iii) The Secretary's notification under paragraph (c)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

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

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

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(5)(i) of this section, the borrower or, if applicable, the borrower's representative must—

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

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(5)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Lender and guaranty agency actions.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

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

(*2*) Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

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

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(8) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b)—(i) General.* After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(ii) *Lender and guaranty agency actions.* (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(B) If the veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must submit a disability claim to the guaranty agency.

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender—

(*1*) Must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(*2*) Must inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in § 682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim. Upon receipt of the claim payment from the guaranty agency, the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

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

* * * * *

(h) * * *

(1) * * *

(v) In the case of a disability claim based on a veteran's discharge request processed in accordance with § 682.402(c)(8), the guaranty agency shall—

(A) Review the claim promptly and not later than 45 days after the claim was filed by the lender submit the veteran's discharge application and supporting documentation to the Secretary or return the claim to the lender in accordance with § 682.402(c)(8)(ii)(D) or (E), as applicable; and

(B) Not later than 45 days after receiving notification from the Secretary of the veteran's eligibility or ineligibility for discharge, pay the claim or return the claim to the lender in accordance with § 682.402(c)(8)(ii)(F) or (G), as applicable.

* * * * *

■ 24. Section 682.405 is amended by:

■ A. In paragraph (a)(3), adding a new sentence at the end of the paragraph.

■ B. In paragraph (b)(1)(iii), adding the words ''by the guaranty agency or its agents'' immediately after the word ''affordable''.

■ C. Revising paragraph (b)(3).

■ D. Adding a new paragraph (c).

The revision and additions read as follows:

§ 682.405 Loan rehabilitation agreement.

(a) * * *

(3) * * * Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(b) * * *

(3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

* * * * *

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

■ 25. Section 682.410 is amended by:

■ A. In paragraph (b)(5), removing the heading ''*Credit bureau reports*'' and adding, in its place, the heading ''*Reports to consumer reporting agencies*''.

■ B. In paragraph (b)(5)(i) introductory text, removing the words ''national credit bureaus'' at the end of the paragraph and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ C. In paragraph (b)(5)(ii) introductory text, removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency'', and removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)''.

■ D. In paragraph (b)(5)(iv)(A), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

■ E. In paragraph (b)(5)(vi)(F), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ F. In paragraph (b)(5)(vi)(G), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

■ G. In paragraph (b)(5)(vi)(K), removing the word ''and'' at the end of the paragraph.

■ H. In paragraph (b)(5)(vi)(L), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ I. Adding a new paragraph (b)(5)(vi)(M).

■ J. Redesignating paragraphs (b)(6)(ii), (iii), (iv), (v), and (vi) as paragraphs (b)(6)(v), (vi), (vii), (ii), and (iii) respectively.

■ K. In newly redesignated paragraph (b)(6)(iii), removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)'', and removing the words ''national credit bureaus (if that is the case)'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ L. Adding a new paragraph (b)(6)(iv).

■ M. In newly redesignated paragraph (b)(6)(vi), removing the reference ''(b)(6)(iv)'' and adding, in its place, the reference ''(b)(6)(vii)''.

The additions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vi) * * *

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

* * * * *

(6) * * *

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

* * * * *

■ 26. Section 682.601 is amended by adding a new paragraph (a)(7)(iii) to read as follows:

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

(a) * * *

(7) * * *

(iii) With regard to any school, the audit must include a determination that—

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of paragraph (c) of this section in making the need-based grants; and

(C) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

■ 28. In § 685.102(b), the definition of ''Estimated financial assistance'' is amended by:

■ A. Removing paragraphs (1)(ii), (iii), (iv), and (ix), and redesignating paragraphs (1)(i), (v), (vi), (vii), and (viii) as paragraphs (1)(ii), (iii), (iv), (v), and (vi), respectively.

■ B. Adding a new paragraph (1)(i) and revising newly redesignated paragraph (1)(ii).

■ C. Adding the word ''and'' after the semicolon at the end of newly redesignated paragraph (1)(v).

■ D. Removing the words ''; and'' at the end of newly redesignated paragraph (1)(vi) and adding, in their place, the punctuation ''.''.
■ E. Removing paragraph (2)(iii), and redesignating paragraphs (2)(iv) and (v) as paragraphs (2)(iii) and (iv), respectively.
■ F. In newly redesignated paragraph (2)(iii), removing the words ''veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill-Active Duty) and''.
■ G. In newly redesignated paragraph (2)(iv), removing the word ''and'' at the end of the paragraph.
■ H. Adding a new paragraph (2)(v).
■ I. In paragraph (2)(vi), removing the words ''this part'' in the first sentence and adding, in their place, the words ''a title IV, HEA program,'' and by removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.
■ J. Adding new paragraphs (2)(vii) and (viii).

The revisions and additions read as follows:

§ 685.102 Definitions.

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps).

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

* * * * *

(2) * * *

(v) Non-need-based employment earnings;

* * * * *

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

■ 29. Section 685.200 is amended by:
■ A. In the introductory text to paragraph (a)(1)(iv), adding the words ''or TEACH Grant service obligation'' immediately after the word ''loan''.
■ B. In the introductory text to paragraph (a)(1)(iv)(A), adding the words ''or TEACH Grant service obligation'' immediately after the word ''Act''.
■ C. In paragraph (a)(1)(iv)(A)(*1*), removing the word ''and'' at the end of the paragraph.
■ D. In paragraph (a)(1)(iv)(A)(*2*), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.
■ E. Adding a new paragraph (a)(1)(iv)(A)(*3*).
■ F. Removing paragraph (a)(1)(iv)(B).
■ G. Redesignating paragraph (a)(1)(iv)(C) as paragraph (a)(1)(iv)(B).
■ H. In the introductory text to newly redesignated paragraph (a)(1)(iv)(B), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

The addition reads as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4), 34 CFR 674.61(b)(3)(i), 34 CFR 682.402(c), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 685.213(b)(3)(ii)(A), 34 CFR 674.61(b)(5), or 34 CFR 682.402(c)(5), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

■ 30. Section 685.202 is amended by:
■ A. Adding a new paragraph (a)(4).
■ B. In paragraph (b)(2), removing the words ''the Secretary capitalizes'' and adding, in their place, the words ''or for a Direct PLUS Loan, the Secretary may capitalize''.

The addition reads as follows:

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

(a) * * *

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

■ 31. Section 685.203 is amended by:
■ A. In paragraph (a)(1)(iii), adding the punctuation '','' immediately after ''$3,500''.
■ B. Revising paragraph (b).
■ C. In paragraph (c)(1)(i), adding the words '', except as provided in paragraph (c)(3) for certain dependent undergraduate students'' immediately after the words ''this section''.
■ D. In paragraph (c)(2)(i)(A), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.
■ E. Removing paragraph (c)(2)(i)(B).
■ F. Redesignating paragraph (c)(2)(i)(C) as paragraph (c)(2)(i)(B).

■ G. In newly redesignated paragraph (c)(2)(i)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after $4,000’’.

■ H. Redesignating paragraph (c)(2)(i)(D) as paragraph (c)(2)(i)(C).

■ I. In newly redesignated paragraph (c)(2)(i)(C), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ J. In paragraph (c)(2)(ii)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ K. In paragraph (c)(2)(ii)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ L. In paragraph (c)(2)(iii)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $7,000,’’ immediately after ‘‘$5,000’’.

■ M. In paragraph (c)(2)(iii)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $7,000,’’ immediately after ‘‘$5,000’’.

■ N. In paragraph (c)(2)(vi)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ O. Adding a new paragraph (c)(3).

■ P. In paragraph (e)(1), adding the words ‘‘, or, effective July 1, 2008, $31,000,’’ immediately after ‘‘$23,000’’.

■ Q. In paragraph (e)(2), adding the words ‘‘, or, effective July 1, 2008, $57,500,’’ immediately after ‘‘$46,000’’.

■ R. Adding a new paragraph (k).

The revisions and additions read as follows:

§ 685.203 Loan limits.

(a) * * *

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program.

(ii) Except as provided in paragraph (c)(3) of this section, for a loan first disbursed on or after July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Stafford/Ford Loan Program in combination with the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, plus—

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled.}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled.}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks in program.}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Federal Direct Unsubsidized Stafford/Ford Loan and Federal Unsubsidized Stafford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, in combination with the amounts determined under paragraph (c) of this section.

(c) * * *

(3) A dependent undergraduate student who qualifies for additional Direct Unsubsidized Loan amounts under this section in accordance with paragraph (c)(1)(ii) is not eligible to receive the additional Direct Unsubsidized Loan amounts provided under paragraph (b)(1)(ii) of this section.

* * * * *

(k) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.

■ 32. Section 685.204 is amended by:

■ A. In paragraph (b)(1)(iii)(A)(*2*), removing the word ‘‘or’’ at the end of the paragraph.

■ B. In paragraph (b)(1)(iii)(A)(*3*), removing the punctuation ‘‘.’’ and adding, in its place, ‘‘; or’’ at the end of the paragraph.

■ C. Adding a new paragraph (b)(1)(iii)(A)(*4*).

■ D. Revising paragraph (b)(1)(iii)(B).

■ E. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

■ F. In newly redesignated paragraph (i)(3), removing the words ‘‘paragraph (h)(2)’’ each time they appear and adding, in their place, the words ‘‘paragraph (i)(2)’’.

■ G. In newly redesignated paragraph (i)(4), removing the words ‘‘paragraph (h)(2)’’ and adding, in their place, the words ‘‘paragraph (i)(2)’’.

■ H. Adding a new paragraph (g).

The revisions and additions read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) * * *

(*4*) The Secretary confirms a borrower’s half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*), (*3*), or (*4*) of this section, the borrower has the option to cancel the deferment and continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

* * * * *

(g) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on § 682.204(b)(1)(iii)(A)(2), (3), or (4), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

* * * * *

■ 33. Section 685.205 is amended by:

■ A. In paragraph (b)(8), removing the word ''or'' at the end of the paragraph.

■ B. In paragraph (b)(9), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

■ C. Adding a new paragraph (b)(10) to read as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

■ 34. Section 685.211 is amended by:

■ A. In paragraph (f)(1), removing the words ''credit bureau'' in the third sentence and adding, in their place, the words ''consumer reporting agency''.

■ B. Adding a new paragraph (f)(4).

The addition reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) * * *

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

■ 35. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

(2) *Determination of eligibility.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the

Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

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

(4) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

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

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

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

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

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

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

(iii) The Secretary's notification under paragraph (b)(4)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

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

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

(5) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—

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

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).*

(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

■ 36. Section 685.217 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (b), adding a definition of *Educational service agency* in alphabetical order.

■ C. Revising the introductory text of paragraph (c)(1).

■ D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

■ E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

■ F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school failed'' and adding, in their place, the word ''fails''.

■ G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

■ H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.
■ I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ K. Adding a new paragraph (c)(3)(iii).
■ L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ O. Adding a new paragraph (c)(4)(iii).
■ P. Revising paragraph (c)(9).
■ Q. Revising paragraph (c)(11).
■ R. In paragraph (d)(2), removing the reference ''34 CFR 682.215'' and adding, in its place, the reference ''34 CFR 682.216''.

The revisions and additions read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an eligible educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * * * *

(3) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(4) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

* * * * *

§ 685.219 [Amended]

■ 37. Section 685.219 is amended in paragraph (b) by removing the words ''licensed or regulated health care'' in paragraph (5)(i) of the definition of ''Public service organization'' and adding, in their place, the words ''licensed or regulated child care''.

§ 685.220 [Amended]

■ 38. Section 685.220 is amended by:
■ A. In paragraph (d)(1)(i)(B)(*3*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.
■ B. In paragraph (d)(1)(i)(B)(*4*), adding the words ''or an income-based repayment plan'' immediately after the

words ''income contingent repayment plan''.

■ C. In paragraph (d)(1)(i)(B)(*5*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the words ''Forgiveness Program''.

■ D. In paragraph (d)(1)(ii)(D), adding the words ''or the income-based repayment plan described in § 685.208(m),'' immediately after the reference ''§ 685.208(k)''.

■ 39. Section 685.221 is amended by:

■ A. Revising paragraph (a)(4).

■ B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(2) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

■ C. In paragraph (b)(2)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the''.

■ D. Redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

■ E. Adding a new paragraph (b)(2)(ii).

■ F. In newly redesignated paragraph (b)(2)(iii), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

■ G. In newly redesignated paragraph (b)(2)(iv), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

The revision and addition read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

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

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(2) * * *

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

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

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

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

* * * * *

[FR Doc. E9–25190 Filed 10–28–09; 8:45 am]

BILLING CODE 4000–01–P