



Federal Register

**Tuesday,
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Part II

Department of Education

**34 CFR Parts 674, 682, and 685
Federal Perkins Loan Program, Federal
Family Education Loan Program, and
William D. Ford Federal Direct Loan
Program; Proposed Rule**

DEPARTMENT OF EDUCATION**34 CFR Parts 674, 682, and 685**

[Docket ID ED-2007-OPE-0133]

RIN 1840-AC89

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these regulations to strengthen and improve the administration of the loan programs authorized under Title IV of the Higher Education Act of 1965, as amended.

DATES: We must receive your comments on or before August 13, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select ED-2007-OPE-0133 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., room 8026, Washington, DC 20006-8542.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions will be

posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006-8542. Telephone: (202) 219-7048 or via the Internet: gail.mclarnon@ed.gov.

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

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

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8026, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA) requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. The proposed regulations that the Department publishes must conform to agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: <http://www.ed.gov/policy/highered/reg/hearulemaking/2007/nr.html>.

On August 18, 2006, the Department published a notice in the **Federal Register** (71 FR 47756) announcing our intent to establish up to four negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent (SMART) Grant programs. A second committee would address issues related to the Federal student loan programs. A third committee would address programmatic, institutional eligibility, and general provisions issues. Lastly, a fourth committee would address accreditation. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The four committees met to develop proposed regulations over the course of several months, beginning in December 2006. This NPRM proposes regulations relating to the student loan programs that were discussed by the second committee mentioned in this paragraph (the "Loans Committee").

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

- September 19, 2006, at the University of California-Berkeley in Berkeley, California.

- October 5, 2006, at the Loyola University in Chicago, Illinois.

- November 2, 2006, at the Royal Pacific Hotel Conference Center in Orlando, Florida.

- November 8, 2006, at the U.S. Department of Education in Washington, DC.

In addition, the Department received written comments on possible regulatory changes submitted directly to the Department by interested parties and organizations. All regional meetings and a summary of all comments received orally and in writing are posted as background material in the docket and can also be accessed at <http://www.ed.gov/policy/highered/reg/hearulemaking/2007/hearings.html>. Staff within the Department also identified issues for discussion and negotiation. Lastly, because The Third Higher Education Extension Act of 2006, (Pub. L. 109–292), made changes to the law governing eligible lender trustee relationships as of September 30, 2006, the Department added this issue to the Loans Committee agenda.

At its first meeting in December, 2006, the Loans Committee reached agreement on its protocols and proposed agenda. These protocols provided that the non-Federal negotiators would not represent the interests of stakeholder constituencies, but would instead participate in the negotiated rulemaking process based on each Committee member's experience and expertise in the Title IV, HEA loan programs.

The members of the Loans Committee were:

- Jennifer Pae, United States Students Association, and Luke Swarthout (alternate), State PIRG (Public Interest Research Groups) Higher Education Project;

- Deanne Loonin and Alys Cohen (alternate) of the National Consumer Law Center.

- Darrel Hammon, Laramie Community College, and Kenneth Whitehurst (alternate), North Carolina Community Colleges.

- Pamela W. Fowler, University of Michigan, Patricia McClurg (alternate), University of Wyoming, and Sara Bauder (alternate), University of Maryland.

- Elizabeth Hicks, Massachusetts Institute of Technology, and Ellen Frishberg (alternate), Johns Hopkins University.

- Jeff Arthur, ECPI College of Technology, Robert Collins (alternate), Apollo Group, and Nancy Broff (alternate), Career College Association.

- Shari Crittendon, United Negro College Fund, and William “Buddy” Blakey (alternate), William A. Blakey & Associates, PLLC.

- Scott Giles, Vermont Student Assistance Corporation, and Rachael Lohman (alternate), Pennsylvania Higher Education Assistance Agency.

- Tom Levandowski, Wachovia Corporation, and Lee Woods (alternate), Chase Education Finance.

- Phil Van Horn, Wyoming Student Loan Corporation, and Robert L. Zier (alternate), Indiana Secondary Market for Education Loans.

- Robert Sommer, Sallie Mae, and Wanda Hall (alternate), EdFinancial Services.

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

- Eileen O’Leary, Stonehill College, and Christine McGuire (alternate), Boston University.

- Alisa Abadinsky, University of Illinois at Chicago, and Karen Fooks (alternate), University of Florida.

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

Ellen Frishberg of Johns Hopkins University resigned from the Committee after the third negotiated rulemaking session.

During its meetings, the Loans Committee reviewed and discussed drafts of proposed regulations. It did not reach consensus on the proposed regulations in this NPRM. More information on the work of this committee can be found at: <http://www.ed.gov/policy/highered/reg/hearulemaking/2007/loans.html>.

These regulations were further refined by the Task Force on Student Loans.

The Secretary created this task force on April 24, 2007, to review issues within the student loan industry. The task force was comprised of representatives from several offices within the Department, including the Office of Postsecondary Education, Office of Federal Student Aid, Office of the General Counsel, Office of Budget Service, Office of Planning, Evaluation, and Policy Development, and Office of Inspector General. The task force submitted its recommendations regarding these regulations to the Secretary on May 9, 2007.

Significant Proposed Regulations

The following discussion of the proposed regulations begins with changes that affect more than one of the title IV student loan programs—the Perkins Loan Program, the FFEL Program, or the Direct Loan Program.

This discussion is followed by separate discussions of proposed changes that affect only one of the three programs. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Simplification of Deferment Process (§§ 674.38, 682.210, 682.210, 682.210, and 685.204)

Statute: Sections 428(b)(1)(M), 455(f)(2), and 464(c)(2)(A) of the HEA authorize deferments for borrowers in the FFEL, Direct Loan, and Perkins Loan programs under certain circumstances. A FFEL, Direct Loan, or Perkins Loan borrower may receive a deferment during a period when the borrower is: Enrolled at least half-time in an institution of higher education; enrolled in an approved graduate fellowship program; enrolled in an approved rehabilitation training program; seeking and unable to find full-time employment; performing qualifying active duty military service; or experiencing an economic hardship.

Current Regulations: Currently, a borrower who has loans held by one or more lenders must apply separately to each lender for a deferment in accordance with §§ 674.38, 682.210, and 685.204 of the Department's regulations. Each lender is required to review the borrower's deferment request, and make its own determination of the borrower's eligibility for the deferment. There is an exception to this requirement for in-school deferments. Under §§ 674.38(a)(2) and 682.210(c)(1), a Perkins institution or a FFEL lender may grant an in-school deferment based on information from the borrower's school, or student status information from another source. The Secretary also has this option in the Direct Loan Program under § 685.204(b)(1)(iii)(A)(3). When an in-school deferment is granted using this procedure, the institution, lender or Secretary must notify the borrower that the deferment has been granted, and provide the borrower an opportunity to decline the deferment.

Proposed Regulations: The proposed regulations in § 682.210(s)(1)(iii) would allow FFEL lenders to grant graduate fellowship deferments, rehabilitation training program deferments, unemployment deferments, military service deferments, and economic hardship deferments based on information that another FFEL lender or the Department has granted the borrower a deferment for the same reason and the same time period. The proposed regulations in § 685.204(g)(2) would also permit the Department to grant a deferment on a Direct Loan based on deferment information from a

FFEL Program lender. The proposed regulations in § 674.38(a)(2) would permit schools in the Perkins Loan Program to grant deferments based on information from another Perkins Loan holder, FFEL lender, or the Department.

Under the proposed regulations in §§ 674.38(a)(3), 682.210(s)(1)(iv) and 685.204(g)(3), Title IV, HEA loan holders will be able to rely in good faith on the deferment eligibility determinations of other lenders, including the Department. However, if a loan holder has evidence indicating that the borrower does not qualify for a deferment, the loan holder may not grant a deferment based on another holder's determination of deferment eligibility.

In addition, the proposed regulations in §§ 674.38(a)(6), 682.210(i)(1) and (t)(7), and 685.204(g)(5) would allow a borrower's representative to apply for a military service deferment on behalf of the borrower. This change would apply to both the Armed Forces deferment available for loans made before July 1, 1993 and the current military service deferment.

Reasons: The non-Federal negotiators recommended adding provisions to § 682.210 of the regulations to allow FFEL lenders to grant deferments based on deferments granted by other lenders. They noted that this is allowable for in-school deferments and asked to extend this authority to other deferments. Under this proposal, the FFEL lender would determine borrower eligibility for the deferment by contacting the other lender or by checking the Department's National Student Loan Data System (NSLDS). The Department agreed to consider this addition to the regulations. In addition, the Department agreed with the negotiators to allow Perkins Loan schools to grant deferments based on a borrower's FFEL or Direct Loan deferment eligibility as reflected in the proposed changes to § 674.38(a). However, since eligibility and documentation requirements for some Perkins Loan deferments are different from corresponding deferment requirements in the FFEL and Direct Loan programs, these proposed regulations would not allow FFEL lenders, or the Department for Direct Loans, to grant deferments based on a borrower receiving a deferment on his or her Perkins Loan.

The proposed regulations limit this simplified deferment process to deferments that are available to a borrower who received a Title IV, HEA loan on or after July 1, 1993. The negotiators suggested that the new regulations should also apply to deferments that were available to a

borrower who first received a Title IV, HEA loan prior to July 1, 1993.

However, the Department decided that the pre-July 1, 1993 deferments are more complex and have more detailed qualifications than the current deferments. In addition, the older deferments are not the same for all types of loans. A borrower could qualify for a deferment on some of their loans but not others. The post-July 1, 1993 deferments are relatively uniform across the Title IV, HEA loan programs and across loan types. In light of these differences, the Department decided that the new policy should apply only to the deferments available on current loans.

Some negotiators asked that the regulations include protection for lenders that grant a deferment in error based on another lender's determination of deferment eligibility. In response, the Department is proposing to add language to §§ 674.38(a)(3), 682.210(s)(1)(iv) and 685.204(g)(3) stating that loan holders may rely in good faith on the deferment determination of another holder, but may not knowingly grant an ineligible borrower a deferment if the loan holder has information indicating that the borrower is not eligible.

Some negotiators proposed that loan holders be allowed to grant a deferment unilaterally, without any contact from the borrower. The Department did not accept this proposal because, although a borrower may qualify for a deferment on all of his or her loans, the borrower may not necessarily want a deferment on all of his or her loans. Under the simplified process, the borrower would not have to submit a deferment application to each lender, but would still have to request the deferment, in writing, electronically or verbally.

Some negotiators requested a change to the regulations that would allow a request for a military service deferment to be submitted by a representative of the borrower as well as the borrower. They noted that borrowers who qualify for these deferments may not be in a position to easily apply for them. The Department agreed that a special provision for these borrowers is warranted. The Department is proposing to amend the regulations in §§ 674.38(a)(6), 682.210(i)(5) and (t)(7), and 685.204(g)(5) to allow a borrower's representative to apply for a military service deferment or an Armed Forces deferment on the borrower's behalf.

The Department notes that granting a deferment under this simplified process is optional for lenders. A lender is not required to use this process when reviewing deferment requests.

Accurate and Complete Copy of a Death Certificate (§§ 674.61, 682.402, and 685.212)

Statute: Sections 437(a) and (d) of the HEA provide for the discharge of a FFEL loan if the borrower, or a dependent on whose behalf a parent has borrowed, dies. This provision also applies to Direct Loans under section 455(a)(1) of the HEA. Section 464(c)(1)(F) provides for the discharge of a Perkins Loan if the borrower dies.

Current Regulations: Current regulations in §§ 674.61(a), 682.402(b), and 685.212(a) state that if a Perkins, FFEL, or Direct Loan borrower dies, or if the student for whom a FFEL or Direct PLUS Loan was borrowed dies, the borrower's loan will be discharged based on an original or certified copy of the death certificate. Under exceptional circumstances, and on a case-by-case basis, a discharge due to the death of the borrower may be granted without an original or certified copy of the death certificate.

Proposed Regulations: The Secretary proposes to amend §§ 674.61(a), 682.402(b), and 685.212(a) to allow the use of an accurate and complete photocopy of the original or certified copy of the borrower's death certificate, in addition to the original or certified copy of the death certificate, to support the discharge of a Title IV loan due to death.

Reasons: The Secretary believes that allowing the use of an accurate and complete photocopy of the death certificate will decrease the burden for survivors of the deceased and for loan holders processing death discharges. We have also learned that, in some states, there are restrictions and additional costs related to getting an additional original or certified copy of the original death certificate to provide to loan holders. Under the proposed regulations, the lender may accept an accurate and complete photocopy of the death certificate. The Secretary chose not to allow the use of a fax or electronic version of the certificate because documents in those formats are more vulnerable to alteration.

Under the proposed regulations a lender may rely on an "accurate and complete photocopy" of the original or certified copy of the death certificate to grant a discharge due to the death of the borrower. The intent of the proposed change is not to require an individual to provide an original or certified copy of the death certificate to the lender for the lender to photocopy, but rather to allow a lender to accept a photocopy of the original or certified copy of the death certificate as an accurate and complete

copy of the original or certified copy, unless there is evidence that the copy is not an accurate and complete copy of the original or certified copy.

Although other data sources such as NSLDS, the Social Security Administration's Death Master File, and documents such as a police report or court documents could possibly be used as a basis for discharging a loan due to death, the Department declined to expand the documentation requirements in order to guard against fraud and abuse in the discharge process.

While the Department believes that it is difficult to alter an original or certified copy of an original death certificate because these documents are generally notarized or contain raised, government stamps validating the document's authenticity, we nonetheless solicit public comment on whether the use of a photocopy of an original or certified copy of an original death certificate could lead to fraud and abuse in the death discharge process. Specifically, we are interested in comments that identify how such fraud is likely to occur and ways to address this issue.

Total and Permanent Disability Discharge (§§ 674.61, 682.402, and 685.213)

Statute: Sections 437(a), 464(c)(1)(F), and 455(a)(1) of the HEA provide for a discharge of a borrower's FFEL, Perkins, or Direct Loan Program loan, respectively, if the borrower becomes totally and permanently disabled. A total and permanent disability is determined in accordance with regulations of the Secretary.

Current Regulations: Sections 674.61(b), 682.402(c), and 685.213 of the Perkins, FFEL, and Direct Loan Program regulations, respectively, authorize the discharge of a loan if the borrower becomes totally and permanently disabled. Section 674.51 of the Perkins Loan Program regulations defines *total and permanent disability*, and § 682.200 defines *totally and permanently disabled*, for the purposes of the FFEL and Direct Loan Programs, as the condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

Under current regulations in §§ 674.61(b), 682.402(c), and 685.213, a Perkins, FFEL or Direct Loan borrower submits a discharge application to the loan holder. The application must include a physician's certification that the borrower is totally and permanently disabled as defined in § 682.200 or has a total and permanent disability as

defined in §§ 674.51. To establish eligibility for the discharge, a borrower cannot have worked or earned money or received a Title IV loan at any time after the date of the borrower's total and permanent disability. The loan holder reviews the application, and upon making an initial determination that the borrower meets the definition and requirements for a total and permanent disability discharge, notifies the borrower that the loan has been assigned to the Department and that no payments are due to the lender. Under § 685.213 of the current regulations, the Department is responsible for reviewing disability discharge applications submitted by Direct Loan borrowers.

Upon assignment of the Perkins or FFEL Loan or receipt of a Direct Loan discharge application, the Department reviews the application. If the borrower meets the eligibility requirements for a discharge, the Department notifies the borrower that the loan has been placed in a three-year conditional discharge status and that no payments are due during that period. During the three-year conditional discharge period, the borrower's income from employment cannot exceed the poverty line for a family of two for any 12-month period, and the borrower cannot take out any additional Title IV loans. Under current regulations, in some cases, the three-year conditional period will already have elapsed if the borrower's total and permanent disability date is more than three years prior to the date the borrower applies for a discharge. In such cases, a final discharge decision is made immediately upon assignment of the account to the Department without any current income verification, as long as the borrower is otherwise eligible. Otherwise, if, at the end of the three-year conditional discharge period, the borrower still meets the discharge requirements, the Department makes a final determination of eligibility and discharges the loan. Under current regulations, any payments received by the loan holder or the institution after the date the loan is assigned to the Secretary or during the three-year conditional discharge period are forwarded to the Department for crediting to the borrower's account. When the Department makes a final determination to discharge the loan, the payments received on the loan after the date the loan was assigned to the Department are returned. If the borrower does not meet the eligibility requirements during the three-year conditional discharge period, collection activity resumes on the loan.

Proposed Regulations: These proposed regulations would restructure

the disability discharge regulations for the Perkins Loan, FFEL, and Direct Loan programs, §§ 674.61(b), 682.402(c) and 685.213, respectively, to clarify the eligibility requirements for a final total and permanent disability discharge and better describe the discharge process. The Department is not changing the definition of *total and permanent disability* in § 674.51 or the definition or *totally and permanently disabled* in § 682.200.

The proposed regulations would: (1) Add a new requirement in §§ 674.61(b)(2)(i), 682.402(c)(2)(i) and 685.213(b)(1) that the borrower submit a discharge application to the loan holder within 90 days of the date the physician certifies the borrower's application; (2) define the date of the borrower's total and permanent disability as the date the physician certifies the borrower's disability on the discharge application form in §§ 674.61(b)(3)(ii), 682.402(c)(3)(ii), and 685.213(c)(2); (3) require a prospective three year conditional discharge period to establish eligibility for a total and permanent disability discharge beginning on the date the Secretary makes an initial determination that the borrower is totally and permanently disabled, in §§ 674.61(b)(3)(iii), 682.402(c)(3)(iii) and 685.213(c)(3); and (4) provide that upon making a final determination of the borrower's total and permanent disability, the Secretary returns those payments made on the loan after the date the physician completed and certified the borrower's discharge on the loan discharge application in §§ 674.61(b)(5), 682.402(c)(4)(iii), 685.213(d)(3)(ii).

Reasons: The Department is proposing to restructure the Perkins Loan, FFEL, and Direct Loan total permanent disability discharge regulations in §§ 674.61(b), 682.402(c) and 685.213, respectively, to clarify the eligibility requirements and to better explain the application and eligibility process. Several negotiators argued that the process and eligibility requirements as currently written are difficult for borrowers to understand. For example, non-Federal negotiators noted that the current regulations establish a different standard for eligibility for the period between the date of the physician's certification and the Secretary's initial determination of eligibility in comparison to the three-year conditional discharge period. The Department proposes to address these concerns by clearly listing the continuing eligibility requirements in § 674.61(b)(2)(iii) of the Perkins Loan Program regulations, § 682.402(c)(3) of the FFEL program regulations, and

§ 685.213(b)(2) of the Direct Loan program regulations and by requiring loan holders to disclose these eligibility requirements to borrowers. Some non-Federal negotiators also noted that even though collection activity is suspended after the borrower submits a discharge application, some borrowers continued to make payments on their loan because they were not aware of the suspension of collection activity. The Department is proposing to amend the regulations to require loan holders to inform borrowers that no further payments on the loan are due once the discharge application is sent to the Secretary for her initial eligibility determination.

The proposed regulations in §§ 674.61(b)(2)(i), 684.402(c)(2)(i) and 685.213(b)(1) would require borrowers to submit the completed application for a total and permanent disability discharge to the loan holder within 90 days of the date the physician certifies the application. This requirement would help ensure that the Secretary has accurate and timely information on which to base her determination. Limiting the time period will also help borrowers avoid the possibility that they might inadvertently take an action that would disqualify them for a final discharge. The Department initially proposed a 30-day application submission requirement, but the Department was persuaded by the non-Federal negotiators that 90 days would provide a more appropriate standard for borrowers.

Under the proposed regulations in §§ 674.61(b)(3)(ii), 682.402(c)(3)(ii), and 685.213(c)(2) if the Secretary makes an initial determination that the borrower qualifies for a discharge, the date of disability is the date the physician certifies the borrower's disability on the form. The proposed regulations also provide for a three-year prospective conditional discharge period to establish eligibility for a total and permanent disability discharge. The conditional discharge period begins on the date that the Secretary makes her initial determination that the borrower is totally and permanently disabled. Thus, the receipt of any Title IV, HEA loans, including consolidation loans, or income by the borrower before the date the physician certified the application form would not disqualify the borrower from receiving a final discharge. However, the borrower would have to meet the disability requirements for a three-year prospective period.

The Department is proposing these changes because currently, in some cases, the three-year conditional discharge period has already elapsed before the borrower applies for a

discharge and a final discharge is made immediately upon assignment of the account to the Department. This result is inconsistent with the original intent of the Department's regulations, which was to conform the discharge requirements to other Federal programs that only provide Federal benefits based on a disability after monitoring the applicant's condition. Further, there have been instances when borrowers have received otherwise disqualifying Title IV loans and earnings in excess of allowable levels after the date of application but also after the date of the borrower's retroactive final discharge. Under current regulations, the Secretary grants a final discharge in these circumstances. Some non-Federal negotiators did not agree with the Department's proposal that the borrower's disability date should be the date the physician certifies that the borrower is disabled on the discharge application form.

Lastly, the Department is proposing changes to §§ 674.61(b)(5), 682.402(c)(4)(iii), and 685.213(d)(3)(ii) to provide that the Secretary, upon making a final determination of the borrower's total and permanent disability, will return payments made on the loan after the date the physician completed and certified the borrower's total and permanent disability on the loan discharge application. The non-Federal negotiators did not agree with the Department's position and stated that if a borrower successfully completed a three-year prospective discharge period, the borrower should receive a refund of prior payments made on the loan. The Department is proposing this change because it believes that not counting any loans or income received prior to the date the physician certifies the borrower's disability on the application and returning payments made by the borrower or on the borrower's behalf back to the date of disability provided by a physician would create two onset dates and create program integrity issues in the administration of the total and permanent disability discharge process. In addition, in administering the discharge process, the Department has found that, in many cases, certifying physicians have to rely solely on the individual's statements in determining a date of disability onset. In these situations, there may not be a strong medical basis for using that date as a date for establishing eligibility for Federal benefits. In light of this history, the Department believes that the best date to use as the eligibility date is the date the physician certified the

application, since that process requires the physician to review the borrower's condition at that time rather than speculate as to the borrower's condition in the past.

NSLDS Reporting Requirements
(§§ 674.16, 682.208, 682.401, and 682.414)

Statute: Section 485B(e) of the HEA provides for the Secretary to prescribe by regulation standards and procedures that require all lenders and guaranty agencies to report information to the NSLDS on all aspects of Title IV loans in uniform formats in order to permit the direct comparison of data submitted by individual lenders, servicers, and guaranty agencies.

Current Regulations: The current Perkins Loan Program and FFEL Program regulations do not reflect NSLDS reporting requirements. Under § 682.401(b)(20), guaranty agencies are required to monitor student enrollment status of a FFEL Program borrower, or a student on whose behalf a parent has borrowed, and report to the current holder of the loan within 60 days any changes in the student's enrollment status that triggers the beginning of the borrower's grace period or the beginning or resumption of the borrower's immediate obligation to make scheduled payments.

Current § 682.414(b)(4) requires guaranty agencies to report information consisting of extracts from computer databases and supplied in the medium and the format prescribed in the Stafford and SLS, and PLUS Loan Tape Dump Procedures. The tape dumps, which are now obsolete, contained loan status information on guaranty agency loans.

Proposed Regulations: The Secretary proposes in § 674.16(j) of the Perkins Loan regulations, and § 682.208(i) and § 682.414(b)(4) of the FFEL regulations to require institutions, lenders, and guaranty agencies to report enrollment and loan status information, or any other Title IV-loan-related data required by the Secretary, to the Secretary by a deadline established by the Secretary.

The proposed changes to § 682.401(b)(20) require a guaranty agency to report enrollment and loan status information on a FFEL Program borrower or student to the current holder of any loan within 30 days of any changes to the student's enrollment status.

Reasons: The proposed changes to §§ 674.16(j), 682.208(i) and 682.414(b)(4) would provide for the establishment by the Secretary of NSLDS reporting timeframes to improve the timeliness and availability of

information important to administering the student loan programs. The Secretary also believes that the Department will be able to implement other proposed regulatory changes, such as simplification of the deferment granting process, more easily and more efficiently if timely and accurate information is more readily available in NSLDS.

Some non-Federal negotiators requested that the proposed regulations require the Secretary to consult with program participants before determining the "deadline dates established by the Secretary". The Department declined to make this change to the proposed regulations, but noted that there are other opportunities for program participants to be involved in discussions about NSLDS reporting requirements and that it was unnecessary to require it in regulations. The Department is required to consult with the community under section 432(e) of the HEA and will continue to discuss the issues and concerns of Title IV, HEA program participants related to NSLDS reporting through established workgroups and conference calls.

Several negotiators noted that the Department's proposed reduction of the timeframe for a guaranty agency to report enrollment status to a lender from 60 days to 30 days might be disruptive and require systems changes for the various participants in the Title IV loan programs. A negotiator requested a longer time frame of at least 45 days. The Department acknowledges that the change to 30 days will have some impact on the guaranty agencies' and lenders' systems. However, the Department is concerned that a timeframe of 45 days or longer will mean that the information in the NSLDS is quickly out-of-date. The Department invites further comment and discussion on this timeframe and on any associated costs through this NPRM. Also, under the master calendar requirements contained in the HEA, if the Department finalizes these proposed regulations on or before November 1, 2007, this provision will be effective on July 1, 2008, which will provide sufficient time for system reprogramming.

Certification of Electronic Signatures on Master Promissory Notes (MPNs) Assigned to the Department (§§ 674.19, 674.50, 682.409, and 682.414)

Statute: Section 467(a) of the HEA authorizes the Secretary to collect assigned Perkins Loans under such terms and conditions as the Secretary may prescribe. Section 432(a) of the HEA authorizes the Secretary to prescribe regulations as necessary to

carry out the purposes of the FFEL Program, including regulations to establish minimum standards with respect to sound management and accountability in the FFEL Program.

Current Regulations: Currently the regulations for the Perkins Loan program and the FFEL Program do not include any requirements for institutions and lenders to create and maintain a record of their electronic signature process for promissory notes and MPNs.

Proposed Regulations: The proposed changes in § 674.19(e)(2) and (3) would require an institution to create and maintain a certification regarding the creation and maintenance of any electronically signed Perkins Loan promissory note or MPN in accordance with documentation requirements in proposed § 674.50. Proposed changes to § 674.19(e)(4)(ii) and § 682.414(a)(5)(iv) would require an institution or the holder of a FFEL loan, respectively, to retain an original of an electronically signed Perkins Loan or FFEL Program MPN for 3 years after all loans on the MPN are satisfied. Under the proposed changes in § 674.50(c)(12) and § 682.414(a)(6), an institution, for assigned Perkins loans, or a guaranty agency and lender, for assigned FFEL loans, would be required to cooperate with the Secretary, upon request, in all matters necessary to enforce an assigned loan that was electronically signed. This cooperation would include providing testimony to ensure the admission of electronic records in legal proceedings and providing the Secretary with the certification regarding the creation and maintenance of electronically signed promissory notes. The proposed changes in §§ 674.50(c)(12)(iii) and 682.414(a)(6)(iii) also would require the institution, or the guaranty agency and lender, respectively, to respond within 10 business days, to any request by the Secretary for any record, affidavit, certification or other evidence needed to resolve any factual dispute in connection with an electronically signed promissory note that has been assigned to the Department. Lastly, proposed changes in §§ 674.50(c)(12)(iv) and 682.414(a)(6)(iv) would require that an institution, or guaranty agency and lender, respectively, ensure that all parties entitled to access have full and complete access to the electronic records associated with an assigned Perkins or FFEL MPN, until all loans made on the MPN are satisfied.

Proposed changes to § 682.409(c)(4)(viii) of the FFEL Program regulations would require the guaranty agency to provide the Secretary with the name and location of the entity in

possession of an original, electronically signed MPN that has been assigned to the Department.

Reasons: MPNs are used in all of the Title IV, HEA Loan programs. MPNs, which can be used for up to a 10-year period, have no loan amount or loan period on the face of the note and can be signed electronically. The Department is amending §§ 674.19 and 674.50 of the Perkins Loan Program regulations and §§ 682.409 and 682.414 of the FFEL Program regulations to support the Department's efforts to enforce electronically-signed promissory notes that are assigned to the Department. These requirements will help ensure that the Department has the evidence to enforce the loan in cases in which a factual dispute or a legal challenge is raised in connection with the validity of the borrower's electronic signature and the MPN. In order to preserve the integrity of the Perkins and FFEL programs as well as the Federal fiscal interest, the Department believes it is essential that an institution or lender be able to guarantee the authenticity of a borrower's signature on loans assigned and collected by the Department.

During the regulatory negotiations, the Department originally proposed to require in § 682.406(a) that a lender submit a certification regarding the creation and maintenance of the electronic MPN or promissory note, including the lender's authentication and signature process, to the guaranty agency as part of the default claim process. The certification would have then been submitted to the Department when the guaranty agency assigned a FFEL loan under the mandatory assignment provisions in § 682.409(c). The Department also originally proposed to amend § 682.414(a)(ii) to require a guaranty agency to maintain a certification regarding the creation and maintenance of the lender's electronic MPN for each loan held by the agency.

With respect to the Perkins Loan Program, the Department originally proposed similar new requirements that an institution maintain a certification regarding the creation and maintenance of the MPN in § 674.19(d) and provide the certification to the Department, upon request, when assigning the loan in accordance with § 674.50(c).

Many non-Federal negotiators believed that the Department's original proposal was too burdensome.

Some non-Federal negotiators submitted a counter-proposal to the Department that proposed placing the burden of creating and maintaining a certification of a lender's electronic signature process on the lender that

created the original electronic MPN. This counter-proposal was intended to be consistent with the lenders' current practices. The non-Federal negotiators from lending organizations reaffirmed that lenders will be in possession of and would deliver whatever the Department needs to enforce an electronically signed promissory note or MPN, including expert testimony in court cases.

The Department returned to the final session of negotiations with revised proposed regulations in § 682.414(a)(6) based on the counter-proposal submitted by some of the non-Federal negotiators. The non-Federal negotiators expressed their support for this proposal, but questioned many of the details. In particular, some non-Federal negotiators believed that it was redundant for the certification of a loan holder's electronic signature process to include a requirement that the lender document its borrower authentication process. However, the Department considers this requirement a vital part of the certification. Several non-Federal negotiators noted that the Perkins Loan Program regulations in §§ 674.19(d) and 674.50(c) did not contain the same detailed requirements as § 682.414(a)(6) regarding the contents of the certification. These proposed regulations include the same standards in both programs. Several non-Federal negotiators thought that the provisions in § 674.50(c)(12)(iii) and § 682.414(a)(6)(iii) that require institutions, lenders and guaranty agencies to respond to requests for information from the Department within 10 business days would be too difficult to meet and asked the Department to use another standard. The Department notes, however, that 10 business days is a significant period of time and that it is vital that the Department receive the information as quickly as possible when a borrower is contesting the validity of a debt. Lastly, several non-Federal negotiators expressed concern about the requirement to retain an original electronically signed MPN for at least 7 years after all the loans made on the MPN have been satisfied. In issuing this NPRM, the Department has, after considering these concerns, decided to require that schools and lenders retain the original, electronically signed MPN for at least 3 years after all the loans made on the MPN have been satisfied. This record retention standard is needed to accommodate borrower challenges to an administrative wage garnishment or federal offset action taken by the Department to collect on assigned FFEL loans.

The Department realizes that these proposed regulations for electronically signed documents may have an impact on the operations of lenders, guaranty agencies and institutions. The Department particularly invites comments on possible changes to these regulations to reduce that impact while ensuring the Department's ability to enforce loans.

Record Retention Requirements on Master Promissory Notes (MPNs) Assigned to the Department (§§ 674.19, 674.50, 682.406, and 682.409)

Statute: Section 443(a) of the General Education Provisions Act (GEPA), 20 U.S. 1232f(a), provides that recipients of Federal funds under any applicable program must retain records of the amount and distribution of Federal funds to facilitate effective audits of the use of those funds. The GEPA generally applies to institutions that participate in the Title IV, HEA programs.

Current Regulations: Current requirements related to the retention of loan disbursement records by institutions are in § 668.24(c)(1)(iv) and (e)(1) and require institutions to retain disbursement records, unless otherwise directed by the Secretary, for three years after the end of the award year for which the aid was awarded and disbursed. Section 674.50(c) does not currently include disbursement records as part of the documentation the Secretary may require an institution to submit when assigning a Perkins Loan to the Department.

Section 682.414(a)(4)(ii) and (iii) requires a guaranty agency to ensure that a lender retains a record of each disbursement of loan proceeds to a borrower for not less than three years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. Section 682.414(a)(4)(iii) also provides that, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period. However, § 682.409(c)(4) does not currently require a guaranty agency to submit a record of the lender's disbursements when assigning a loan to the Department.

Proposed Regulations: The proposed changes in § 674.19(e)(2)(i) and (e)(3)(i) would require an institution that participates in the Perkins Loan Program to retain records showing the date and amount of each disbursement of each loan made under an MPN. The institution also would be required to retain disbursement records for each loan made on an MPN until the loan is

canceled, repaid, or otherwise satisfied. Proposed § 674.50(c)(11) would require an institution to submit disbursement records on an assigned Perkins loan upon the Secretary's request. The proposed changes in § 682.409(c)(4)(vii) would require a guaranty agency to submit the record of the lender's disbursement of loan funds to the school for delivery to the borrower when assigning a FFEL Loan to the Department.

Reasons: The proposed changes to §§ 674.19(e) and 674.50(c) of the Perkins Loan Program regulations that require the retention of MPN disbursement records by an institution and submission of such records, if requested by the Secretary, on Perkins Loans assigned to the Department would support enforcement and collection on the MPN. These regulatory changes would also facilitate the process of proving that a borrower benefited from the proceeds of the loan, if the borrower challenges the validity of the loan. The proposed addition of § 682.409(c)(4)(vii), requiring a guaranty agency to submit a record of the lender's disbursement records upon assigning an FFEL loan to the Department, would accomplish the same enforcement goals.

The Department's original proposal related to the retention of disbursement records in support of enforcement of FFEL loans assigned to the Department presented during the negotiations was different than the changes proposed here. The Department originally proposed to require schools to report to the lender the date and amount of each disbursement of FFEL loan funds to a borrower's account no later than 30 days after delivery of the disbursement to the borrower. Under the Department's original proposal, lenders also would have been required to provide the record of a school's delivery of loan disbursements to a FFEL borrower as a condition for a guaranty agency to make a claim payment and receive reinsurance coverage. Lastly, the Department originally proposed to require that the guaranty agency, upon assignment of a FFEL loan to the Department, submit a record of the school's delivery of loan disbursements to the borrower.

The Department's original proposal for the retention of MPN disbursement records on assigned Perkins Loans is reflected in these proposed regulations.

Some non-Federal negotiators expressed concern about the burden associated with reporting and retaining voluminous amounts of disbursement data when only a limited amount of the data would actually be needed by the Department to enforce an assigned

Perkins or FFEL loan. Some non-Federal negotiators expressed concern that the new requirements could affect the payment of insurance and reinsurance claims in the FFEL program. Some of the non-Federal negotiators asserted that lenders, guaranty agencies, and schools could supply needed disbursement records to the Department without adding new regulations. Several non-Federal negotiators suggested that the Department use existing data systems, such as the NSLDS, to collect disbursement information, rather than requiring new record retention procedures.

The Department carefully considered the concerns of these non-Federal negotiators, and returned to the last session of negotiations with the proposed changes to the regulations on retention of disbursement records that are reflected in this NPRM. The Department decided that requiring the collection, retention, and submission of a school-based record documenting each disbursement of a FFEL loan might be too burdensome in light of the relatively few occasions that require the use of such records. The Department decided to continue to use the lender documentation of disbursements currently provided to the Department in the FFEL assignment process. The Department is proposing to codify this practice in § 682.409(c)(4)(vii). However, the Department intends to monitor this process carefully and will require a guaranty agency or lender to return reinsurance, interest benefits and special allowance for any loan determined to be unenforceable due to the absence of disbursement records in accordance with § 682.406(a)(13). If the disbursement documentation is not available or reliable, the Department reserves its authority to reexamine this issue in the future.

For institutions that participate in the Perkins Loan program, the Department is proposing new provisions requiring the retention of school-based disbursement records because the institution is the lender in the Perkins Loan Program. Moreover, because MPNs have been in use in the Perkins Loan Program for approximately three years, institutions have retained all disbursement records on Perkins MPNs under current record retention requirements in § 668.24. The only new requirement for Perkins institutions will be that these disbursement records must be retained for at least three years after a Perkins Loan is satisfied and that these disbursement records be submitted to the Department on an assigned Perkins MPN, if requested by the Secretary.

Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers (§§ 682.603, 682.604(f), 682.604(g), 685.301, 685.304(a), and 685.304(b))

Statute: Under section 428B(a)(1) of the HEA, a graduate or professional student may borrow a PLUS Loan. However, section 485(b)(1)(A) of the HEA specifically excludes PLUS Loan borrowers from the groups of borrowers for which exit counseling must be provided. The HEA does not address entrance counseling requirements for Stafford and PLUS Loan borrowers.

Current Regulations: The current regulations in §§ 682.604(f) and (g) and 685.304(a) and (b) require entrance and exit counseling for Stafford Loan borrowers, but not for graduate or professional student PLUS Loan borrowers.

Proposed Regulations: Proposed § 682.604(f)(2) would require entrance counseling for graduate or professional student PLUS Loan borrowers. The proposed entrance counseling requirements for student PLUS Loan borrowers would vary, depending on whether the borrower has received a Stafford Loan prior to receipt of the PLUS Loan.

Proposed § 682.604(g) would also modify the exit counseling requirements for Stafford Loan borrowers. If the borrower has received a combination of Stafford Loans and PLUS Loans, the institution must provide average anticipated monthly repayment amount information based on the combination of different loan types the borrower has received in accordance with proposed § 682.604(g)(2)(i).

In addition, the proposed regulations in § 682.603(d) would require institutions, as part of the process for certifying a FFEL Program Loan, to notify graduate or professional students who are applying for a PLUS Loan of their eligibility for a Stafford Loan. The proposed regulations require institutions to provide a comparison of the terms and conditions of a PLUS Loan and Stafford Loan, and ensure that prospective PLUS borrowers have an opportunity to request a Stafford Loan.

The proposed regulations in §§ 685.301(a)(3), 685.304(a)(2), and 685.304(b)(4) would include comparable changes to the Direct Loan Program regulations with respect to graduate or professional student borrowers of Direct PLUS Loans.

Reasons: The committee agreed that with the newly authorized availability of PLUS Loans to graduate and professional students, there is a need to revise the loan counseling requirements

to account for graduate and professional student PLUS borrowers.

Several negotiators pointed out that exit counseling is often more beneficial to student borrowers than entrance counseling, as exit counseling occurs at the time the loan is nearing repayment, and students are more focused on repaying the loan at that point. However, the statute specifically exempts PLUS borrowers from exit counseling requirements. Although the Department encourages schools to provide exit counseling to graduate and professional student PLUS borrowers, the Department cannot require schools to provide such counseling.

One negotiator suggested that the Department require a school's Stafford Loan exit counseling include information related to the PLUS Loan if a Stafford Loan borrower also had a PLUS Loan. The Department determined that, in those cases, the exit counseling requirements for Stafford Loan borrowers could be modified to include information on PLUS Loans. Accordingly, that requirement is included in §§ 682.604(g)(2) and 685.304(b)(4) of the proposed regulations.

The Department and the other negotiators agreed that borrowers who are eligible for both Stafford Loans and PLUS Loans should be given information on the relative merits of each loan type, and be given an opportunity to obtain a Stafford Loan prior to the borrower's receipt of a PLUS Loan. Therefore, the Department is proposing to require in §§ 682.603(d) and 685.301(a) that the school provide a comparison of the terms and conditions of a PLUS Loan and a Stafford Loan prior to the graduate or professional student's receipt of a PLUS Loan, so the borrower has the opportunity to make the best decision in terms of which loan to accept.

Several negotiators felt that the Department's initial proposal was too vague, and asked for more specificity regarding which terms and conditions should be highlighted for these borrowers. In response, the Department has added more specificity to §§ 682.603(d)(1) and 685.301(a)(3) of the proposed regulations.

With regard to entrance counseling requirements for borrowers who have both Stafford and PLUS Loans, one negotiator asked if the proposed regulations would preclude a school from providing both Stafford and PLUS Loan entrance counseling at the same time. The Department responded that the proposed regulations would not preclude this practice.

One negotiator pointed out that many graduate or professional student PLUS borrowers will have already received Stafford Loans as undergraduates, and therefore will have already received Stafford Loan entrance counseling. Since the entrance counseling information for both loan types is similar, this negotiator felt that it would be redundant to offer PLUS Loan entrance counseling to a borrower who was already received Stafford Loan entrance counseling. Other negotiators, however, argued that since the terms and conditions of the loans are different, additional counseling should be required. In light of this discussion, the Department is proposing to modify the entrance counseling requirements in §§ 682.604(f)(2) and 685.304(a)(2) to require that different sets of information be provided to graduate or professional student PLUS borrowers who have already received Stafford Loans, and graduate or professional student PLUS borrowers who have not received Stafford Loans.

Maximum Loan Period (§§ 682.401, 682.603, and 685.301)

Statute: The HEA does not address the issue of maximum loan periods specifically.

Current Regulations: Current regulations in § 682.401(b)(2)(ii)(C), § 682.603(f)(2)(i), and § 685.301(a)(9)(ii)(A) provide that the loan period for a title IV, HEA program loan may not exceed 12 months.

Proposed Regulations: Proposed §§ 682.401(b)(2)(ii)(A), 682.603(g)(2)(i), and 685.301(a)(10)(ii)(A) would eliminate the maximum 12-month loan period for annual loan limits in the FFEL and Direct Loan programs and the 12 month period of loan guarantee in the FFEL Program.

Reasons: The Secretary believes eliminating the 12 month limit on loan periods would give schools, lenders and students greater flexibility when rescheduling disbursements. This proposed change would allow institutions to certify a single loan for students in shorter non-term or nonstandard term programs and to provide greater flexibility in rescheduling disbursements for students who drop out and return within the permitted 180-day period.

This issue was added to the rulemaking agenda at the request of some non-Federal negotiators. One proponent of the change noted that, on average, 17 percent of students have an academic program longer than a 12-month period, and by eliminating the maximum length of a loan period, the need to certify another loan to cover the

remainder of the program would be eliminated. The negotiators noted that the proposed changes would not increase the amount of borrowing by students. In other words, annual loan limits would still be controlled by the institution's academic year in those instances where the academic year and loan period both exceed 12 months.

The Secretary agrees with these negotiators that it would benefit the students and the FFEL and Direct Loan Programs to remove the 12 month rule from the regulations.

Mandatory Assignment of Defaulted Perkins Loans. (§§ 674.8 and 674.50)

Statute: To participate in the Perkins Loan Program, an institution of higher education enters into a Program Participation Agreement (PPA) with the Secretary under section 463 of the HEA. The HEA enumerates several provisions of the PPA. Section 463(a)(9) of the HEA allows for the addition of provisions to the PPA, agreed to by the institution and the Secretary, that may be necessary to protect the United States from unreasonable risk of loss.

Current Regulations: The regulations governing the required contents of the PPA are in § 674.8 of the Perkins Loan Program regulations. Under § 674.8(d), the PPA includes a provision that the school may voluntarily assign a defaulted Perkins Loan to the Department if the school decides not to service or collect the loan or the loan is in default despite the school's due diligence in collecting the loan.

Proposed Regulations: The proposed regulations in § 674.8(d)(3) would provide that the PPA also include a provision under which the Department could require assignment of a Perkins Loan if the outstanding principal balance of the loan is \$100 or more, the loan has been in default for seven or more years, and a payment has not been received on the loan in the preceding 12 months. The proposed regulations provide an exception to the mandatory assignment requirement if payments were not due on the loan in the preceding 12 months because the loan was in an authorized deferment or forbearance period. Under proposed § 674.50(e)(1) the Secretary would accept the assignment of a Perkins Loan without the borrower's Social Security Number if the Secretary has exercised her mandatory assignment authority under § 674.8(d)(3).

Reasons: The Department's records show that institutions are holding more than \$400 million in uncollected Perkins Loans that have been in default for 5 years or more. Since Perkins Loans are comprised largely of Federal funds,

these uncollected loans present an unreasonable risk of loss to the United States.

The Department has collection tools, such as Federal benefit offsets, that are not available to the Perkins institutions. The Department has encouraged schools to voluntarily assign these old defaulted loans, so that the Department may employ these tools to collect on these loans. As part of this effort, the Department, in recent years, significantly streamlined the voluntary assignment process for Perkins Loans. Despite these efforts, the numbers and amounts of older defaulted Perkins Loans held by schools continues to grow.

To address this problem, the Department proposes modifying the regulations governing the PPA to provide for mandatory assignment of older defaulted loans, at the request of the Secretary. One of the negotiators recommended, as an alternative to the proposed regulations, that the Department adopt a referral process, under which a school could refer a loan to the Department. The Department would collect on the loan and return the proceeds to the school, minus collection charges. Other negotiators proposed that if the Department required mandatory assignment of loans, the funds collected from those Perkins Loans should be re-allocated to Perkins schools.

The Department did not accept these proposals. The Department previously used a referral program with very limited success. In addition, there is no system in place for re-allocation of net Department collections to Perkins institutions. Accordingly, the Department does not believe these proposals are in the Federal fiscal interest.

One negotiator pointed out that the current assignment regulations require a Social Security Number for all assigned loans. This negotiator noted that, in the early years of the program, schools were not required to collect the Social Security Numbers of Perkins Loan borrowers. The negotiator feared that schools would be penalized if they were required to assign loans, only to have the assignments rejected for lack of a Social Security Number. The Department has addressed this concern in the proposed regulations by exempting mandatorily assigned Perkins Loans from the requirement that the institution provide a Social Security Number for all assigned loans.

The Department initially proposed mandatory assignment of defaulted Perkins Loans if the outstanding balance of the loan is \$50 or more and the loan has been in default for 5 years.

Negotiators offered a counter-proposal, requiring assignment if the account to be assigned is more than \$1,000 in outstanding principal, and the borrower has not made a payment on the loan in 10 years, excluding authorized periods of deferment and forbearance, and excluding loans for which the school has obtained a judgment.

The Department did not accept the counter-proposal because excluding all deferment and forbearance periods from the 10 years would push the loans eligible for mandatory assignment significantly beyond 10 years in default. The Department believes that the proposed criteria would effectively rule out mandatory assignment of many of the loans that would most benefit from the Department's collection activities.

However, the Department has modified its original proposal. In particular, the Department's proposed regulations would require a loan to be assigned if the account balance is \$100 or more and it has been in default for at least 7 years. The revised proposal generally approximates the mandatory assignment requirements in the FFEL Program.

Reasonable Collection Costs (§ 674.45)

Statute: Section 464A(b)(1) of the HEA provides for assessing against a borrower reasonable collection costs on a defaulted Title IV loan. The HEA does not define "reasonable collection costs" for purposes of the Perkins Loan Program.

Current Regulations: Section 674.45(e) requires a school to assess collection costs against a borrower, based on either the actual costs incurred for those collection actions, or an average of the costs incurred for similar actions taken to collect loans in similar stages of delinquency. The current regulations do not cap collection costs that may be charged to the borrower, except, as described in § 674.39, in the case of a loan that has been successfully rehabilitated. Section 674.39(c)(1) caps collection costs on rehabilitated loans at 24 percent, unless the borrower defaults on the rehabilitated loan. However, § 674.47(e) establishes caps on the amount of unpaid collection costs that a school may charge to its Perkins Fund.

Proposed Regulations: The proposed regulations in § 674.45(e)(3) would limit the amount of collection costs a school may assess against a Perkins Loan borrower to 30 percent of the total of the principal, interest, and late charges collected for first collection efforts; 40 percent of the total of the principal, interest, and late charges collected for second collection efforts; and, in cases of litigation, 40 percent of the total of

the principal, interest, and late charges collected plus court costs. The proposed regulations specify that these caps on collection costs go into effect for collection agency placements made on or after July 1, 2008.

Reasons: The lack of a cap on collection costs in the Perkins Loan Program has led to abuse, with some institutions charging collection costs of 60 percent or more. During the negotiations, the Department initially proposed capping Perkins Loan Program collection costs at 24 percent, to match the limit already in place for Perkins loans that have been rehabilitated. Several negotiators contended that this cap was too low. They pointed out that Perkins Loans are often low-balance loans, but that they require the same efforts to collect as higher-balance loans. This can lead to increased collection costs in the Perkins Loan Program.

These negotiators also noted that most collection agencies charge on a contingency fee basis and that a percentage of the amount collected from the borrower goes to the collection agency. One negotiator asserted that a 24 percent collection cap would limit the amount that could be charged to the borrower to 19.3 percent, to allow for the collection agency to retain its fee, and to still make the Perkins Fund whole by recovering and returning to the Fund the entire amount owed by the borrower.

The negotiators also pointed out that collection agency fees are market driven and competitive and that placing a cap on collection costs would increase the collection costs that would have to be absorbed by the Fund. This would have the effect of reducing the amount of Perkins Loans available to future borrowers.

These negotiators also pointed out that litigation is required under certain circumstances in the Perkins Loan program. If schools must litigate to stay in compliance with the Perkins Loan regulations, but can only assess collection costs of 24 percent, this would deplete the Perkins Fund.

Another negotiator argued that it would not be profitable for collection agencies to provide services to smaller schools under the proposed collection costs cap. This negotiator also contended that a low cap would reduce the effectiveness of the collection agencies.

The Department asked negotiators to propose alternatives to the proposed 24 percent cap on collection costs. One negotiator stated that any cap on collection costs in the Perkins Loan Program would be unreasonable, because there are so many variables

involved in collecting on a Perkins Loan.

Some negotiators offered a counter-proposal that included a sliding scale for the cap on collection costs: For first collection efforts, 33 percent of the unpaid balance; for second collection efforts, 40 percent of the unpaid balance; for loans that have been litigated, 50 percent plus court costs; for borrowers living abroad, 50 percent of the unpaid balance.

The Department and other negotiators believe that a 50 percent cap is too high. However, the Department's proposed regulations do reflect an increase from the original proposal in light of the arguments and factors noted during the negotiations.

Child or Family Service Cancellation (§ 674.56)

Statute: Under section 465(a)(2)(I) of the HEA, a Perkins Loan borrower may qualify for cancellation of the loan if the borrower is a full-time employee of a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities, and the families of such children.

Current Regulations: The current regulations for the child or family service discharge in § 674.56(b) reflect the statutory language, without providing additional details on the eligibility criteria for a child or family service cancellation.

Proposed Regulations: The proposed regulations in § 674.56(b) expand on the current regulations and specify that, to qualify for a child or family service cancellation, a borrower who is a full-time, non-supervisory employee of a child or family service agency must be providing services directly and exclusively to high-risk children from low-income communities. In addition, the proposed regulations specify that if the employee provides services to the families of high-risk children from low-income communities, the services provided to the children's families must be secondary to the services provided to the high-risk children from low-income communities.

Reasons: On October 20, 2005, the Department published Dear Colleague Letter (DCL) GEN-05-15, which clarified the Department's long-standing policy with regard to the eligibility criteria for a child or family service cancellation. The DCL specifies that a full-time, non-supervisory employee of a public or private child or family service agency must be providing services directly and exclusively to high-risk children from low-income

communities to qualify for a child or family service cancellation. As noted in the DCL, many employees of a child or family service agency who do not work directly with high-risk children from low-income communities may provide services that indirectly benefit such children. Congress did not intend such borrowers to qualify for child or family service cancellations, unless the borrower is in a supervisory position, and is supervising staff members who work directly with high-risk children from low-income communities. The NPRM would incorporate this guidance into the regulations in proposed § 674.56(b).

Prohibited Inducements (§§ 682.200 and 682.401)

Statute: Section 435(d)(5) of the HEA provides that, after notice and an opportunity for a hearing, the Secretary may disqualify from participation in the FFEL Program any FFEL lender that provides inducements or engages in other prohibited activity to secure FFEL loan applications or sell other products. Those prohibited inducements and activities include: Offering, directly or indirectly, points, premiums, payments, or other inducements to any educational institution or individual to secure FFEL loan applications; conducting unsolicited mailings of student loan applications to individuals who have not borrowed previously from the lender; offering FFEL loans to a prospective borrower to induce the borrower to purchase an insurance policy or other product; or engaging in fraudulent or misleading advertising. A lender is not prohibited from providing assistance to schools that is comparable to the kinds of assistance that the Department provides to schools through the Direct Loan Program. In order to avoid confusion regarding the types of assistance a lender may provide to schools, the Department will identify and publish a list of services provided to schools through the Direct Loan Program on or before publication of final regulations. The most recent description of the kinds of assistance the Department provides to schools in the Direct Loan Program was published in a Notice of Proposed Rulemaking on August 10, 1999 (64 FR 43428, 43429–43430) and can be accessed at: <http://www.ed.gov/legislation/FedRegister/proprule/1999-3/081099a.html>.

Similarly, section 428(b)(3) of the HEA restricts guaranty agencies from offering inducements or engaging in other prohibited activities to secure applicants for FFEL loans or to secure the designation of the guaranty agency as the insurer of particular loans. A

guaranty agency is prohibited from: Offering, directly or indirectly, premiums, payments, or other inducements to any educational institution or its employees to secure FFEL loan applicants; or offering to a lender or its employees, agents, or independent contractors, any premiums, incentive payments, or other inducements to administer or market loans and secure designation as the guarantor or insurer of loans, (except for Unsubsidized Stafford loans and lender-of-last-resort loans). The guaranty agency is also prohibited from conducting unsolicited mailings of student loan applications to students or their parents unless the agency has previously guaranteed a FFEL Loan for the student or parent, and from conducting fraudulent or misleading advertising related to loan availability. A guaranty agency is not prohibited from providing assistance to schools that is comparable to the kinds of assistance the Department provides to schools through the Direct Loan Program.

Current Regulations: Prohibited inducements and other impermissible activities by lenders are contained in the definition of *lender* in 34 CFR § 682.200(b). The regulations mirror the statutory provisions except to clarify that: (1) Assistance provided to schools that is comparable to that provided by the Secretary is limited to the kinds of assistance provided to schools under or in furtherance of the Direct Loan program; (2) unsolicited mailing of student loan application forms includes applications sent to the student and the student's parents; and (3) the prohibition against fraudulent and misleading advertising refers to advertising related to the lender's FFEL program activities. The comparable regulations for guaranty agencies are in 34 CFR 682.401(e), which specifies that a guaranty agency may not offer, directly or indirectly, any premium, payment, or other inducement to an employee or student of a school, or any entity or individual affiliated with a school, to secure FFEL Loan applicants. The regulations provide examples of prohibited inducements of lenders by a guaranty agency and include: Compensating lenders or their representatives to secure loan applications for guarantee by the agency; performing functions that a lender would otherwise perform without appropriate compensation; providing equipment or supplies to lenders at below market cost or rental; and offering to pay a lender not holding loans guaranteed by the agency a fee for

applications guaranteed by the agency. The current regulations also recognize the administrative and oversight functions of the guaranty agency by specifically excluding certain activities from the description of prohibited inducements. The regulations also prohibit guaranty agencies from sending unsolicited mailings to students in postsecondary and secondary schools and their parents unless the individual had borrowed previously using the agency's loan guarantee and conducting fraudulent or misleading advertising concerning loan availability.

Proposed Regulations: The proposed regulations would incorporate, with some modifications, current interpretive and clarifying guidance on prohibited inducements and activities provided to lenders and guaranty agencies by the Department over the years since the provisions were added to the HEA. This guidance was contained in various DCLs issued by the Department and in responses to private letter inquiries from program participants. The most comprehensive DCL on this subject was issued in February 1989 (No. 89–L–129). The proposed regulations for both lenders and guaranty agencies adopt the format of that DCL to include a non-exhaustive list of examples of prohibited inducements and activities, and an exhaustive list of permissible activities. Under these proposed regulations, certain activities are identified as permissible, because the Department believes those activities are necessary for the lender or guaranty agency to fulfill its role in the administration of the FFEL Program. Consistent with the Department's longstanding policy in this area, the scope of permissible activities by guaranty agencies is broader than that for lenders in recognition of their administrative, training, outreach, and oversight roles in the FFEL program.

Under paragraph (5)(i) of the definition of *lender* in § 682.200(b) of the proposed regulations, lenders would be prohibited from offering, directly or indirectly, any points, premiums, payments, or other benefits to any school or other party to secure FFEL loan applications or loan volume. The proposed regulations would add a definition of a *school-affiliated organization* to § 682.200, to include alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations. Prohibited payments and other benefits to prospective borrowers would include prizes or additional financial aid funds. The proposed regulations would also provide other examples of "other benefits" to a school

that would be prohibited, including: Access to a lender's other financial products, computer hardware, and payment of the cost of printing and distribution of college catalogs and other materials at less than market rate or at no cost.

The proposed regulations would prohibit a lender from undertaking philanthropic activities, such as providing grants, scholarships, restricted gifts, or financial contributions to secure loan applications, loan volume, or placement on a school's preferred lender list. Lenders would also be prohibited from making payments or providing other benefits to a student at a school, or to a loan solicitor or sales representative who visits campuses, in exchange for loan applications secured from individual prospective borrowers. The proposed regulations would prohibit lenders from paying conference or training registration, transportation and lodging costs for employees of schools and school-affiliated organizations. The proposed regulations would further prohibit a lender's payment of any entertainment expenses related to lender-sponsored functions and activities for school and school-affiliated organization employees. Lenders would also be prohibited from providing staffing services to a school as a third-party servicer or otherwise to assist a school with financial aid related functions, on more than a short-term, non-recurring emergency basis. The proposed regulations would also modify prior program guidance by prohibiting all payments of loan application referral or processing fees between lenders, (whether or not the lender receiving the payment participates in the FFEL Program), or between lenders and any other entity. The proposed regulations would not revise the current regulations governing the prohibition on lenders conducting unsolicited mailings, offering FFEL Loans to induce a borrower to purchase a life insurance policy or other product or service offered by the lender, and engaging in fraudulent or misleading advertising.

The proposed regulations would permit a lender to undertake activities that are specifically permitted by the HEA. These activities include: Providing assistance to a school, as identified by the Secretary, that is comparable to the assistance provided by the Department to a school in the Direct Loan Program; offering reduced borrower loan origination fees; offering reduced borrower interest rates; paying Federal default fees that would otherwise be paid by the borrower; and purchasing loans from another loan

holder at a premium. In addition, the proposed regulations would permit a lender to participate in a school's or guaranty agency's student financial aid and financial literacy outreach activities, as long as the lender does not promote its student loan or other services to the recipients or attendees and there is full disclosure of any lender sponsorship, including the development and printing of any materials. The proposed regulations would allow a lender to provide a toll-free telephone number and free data transmission services to schools that participate in the FFEL program with the lender and to the school's borrowers and prospective borrowers for the purpose of communications on FFEL Loans. The proposed regulations would permit a lender to continue to offer repayment incentive programs to borrowers under which the borrower receives or retains a benefit, such as a reduced interest rate or forgiveness of a certain amount of loan principal in exchange for the borrower making one or more scheduled payments. The proposed regulations would also permit a lender to sponsor meals, refreshments, and receptions to school officials or employees that are reasonable in cost and that are scheduled in conjunction with meeting or conference events if those functions are open to all meeting or conference attendees. The proposed regulations would also permit a lender to provide schools, school-affiliated organizations and borrowers items of nominal value that constitute a form of generalized marketing or are intended to create good will.

Section 682.401 of the proposed regulations, which governs guaranty agency prohibited inducements and permitted activities, would generally mirror the proposed regulations for lenders. The proposed regulations would prohibit a guaranty agency from providing a school with prizes or additional financial aid funds under any Title IV, State or private program based on the school's voluntary or coerced agreement to participate in the guaranty agency's program or to provide a specified volume of loans, using the agency's loan guarantee. The proposed regulations would prohibit the payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for school employees or employees of school-affiliated

organizations. The proposed regulations would prohibit a guaranty agency from undertaking philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders. The proposed regulations would also prohibit a guaranty agency from providing staffing services to a school, including as a third-party servicer, other than on a short-term, non-recurring emergency basis to assist the school with financial aid-related functions. The proposed regulations would also prohibit a guaranty agency from assessing additional costs or denying benefits to a school or lender that would otherwise be provided by the agency because the school or lender declined to agree to participate in the agency's program or declined or failed to provide a certain volume of loan applications or loan volume for the agency's loan guarantee.

Unlike the proposed regulations for participating lenders, the proposed regulations would allow a guaranty agency to provide meals and refreshments that are reasonable in cost and provided in connection with guaranteed agency-provided training for school and lender program participants and for elementary, secondary, and postsecondary school personnel and in conjunction with other workshops and forums customarily used by the guaranty agency to fulfill its responsibilities under the HEA. The proposed regulations also would permit a guaranty agency to pay travel and lodging costs that are reasonable as to cost, location and duration, to facilitate attendance of school staff in training programs and facility service tours that school staff would otherwise be unable to attend. Guaranty agencies would also be permitted to pay reasonable costs for school officials to participate on an agency's governing board, a standing official advisory committee, or in support of other official activities of an agency in accordance with proposed § 682.401(e)(2)(iv). The proposed regulations also reflect the guaranty agency's ability under the HEA to pay Federal default fees on loans that would otherwise be paid by the borrowers and to undertake default aversion activities approved by the Secretary with certain guaranty agency funds. There are no proposed changes to the current regulations governing a guaranty

agency's direct or indirect payment of incentives or other inducements to lenders to secure the agency as an insurer of the lender's FFEL loans, or relating to the prohibitions against the unsolicited mailing or distribution of unsolicited loan applications to students in secondary or postsecondary schools and their parents and against fraudulent and misleading advertising concerning loan availability.

The proposed regulations would also clarify and strengthen the Department's authority to enforce the rules related to improper inducements. There are three proposed changes in this area. First, the proposed regulations would amend §§ 682.413(h), 682.705(c), and 682.706(d) to provide that, in any formal action against a lender or guaranty agency based on a violation of the prohibited inducement provisions, once the Department's deciding official finds that the lender or guaranty agency provided or offered the payments or activities specified in the definition of *lender* in § 682.200 or § 682.401, the Secretary will apply a "rebuttable presumption" that the activities or payments were undertaken or made by the lender or guaranty agency to secure FFEL Loan applications or FFEL loan volume. The lender or guaranty agency will have a full opportunity to show that the activity or payment was made for reasons unrelated to securing loan applications or loan volume.

Another proposed change in this area would add a new § 682.406(d) to specify that a guaranty agency may not make a claim payment from its Federal Fund to a lender or request a reinsurance payment from the Department on a loan if the lender offered or provided an improper inducement, as defined in the definition of *lender* in § 682.200(b), to a school or other party in connection with the making of the loan. This change would reflect the Department's long-standing policy that a loan made in violation of the prohibited inducement provisions is not eligible for federal subsidy payments.

The final change in the area of enforcement related to inducements would clarify and expand the borrower's legal rights. Since 1994, the promissory notes and MPNs used in the FFEL Program have included a description of the borrower's rights under the Federal Trade Commission's (FTC's) Holder Rule as it applies to FFEL loans. Under the FTC's Holder Rule, if a loan is made by a for-profit school, or the borrower is referred to the lender by a for-profit school, any lender holding the borrower's loans is subject to all claims and defenses that the borrower could assert against the school

with respect to the loan. Section 682.209(k) of the proposed regulations would expand the protections provided by the FTC's Holder Rule by essentially incorporating it into the regulations, applying it to all loans made under the FFEL Program and specifying that it applies if the lender making the loan offered or provided an improper inducement to the school or any other party in connection with the making of the loan.

Reasons: The Department believes that more explicit regulatory requirements governing prohibited incentive payments and other inducements by lenders and guaranty agencies are needed to ensure FFEL Program integrity, reassure borrowers and taxpayers of that integrity, and enhance the Secretary's enforcement authority in this area. Current regulations are primarily limited to restating the statutory language currently in the HEA. The Department's interpretive and policy guidance in this area over the years has been issued in DCLs and in responses to private letter inquiries from program participants. The most comprehensive guidance on this subject was published as DCL 89-L-129/S-55/G-157 in February 1989. The most recent guidance on prohibited school and lender relationships was published as DCL 95-G-278/L-178/S-73 in March 1995. The Department believes that this guidance, and the general requirements of the law, may no longer be generally known and understood by lenders and other participants that have entered the FFEL industry in the last few years. Moreover, the FFEL Program has changed significantly since this prior guidance was issued. In recent years, the increased competition among FFEL lenders, particularly in the FFEL Consolidation Loan Program, has resulted in a number of lenders offering a variety of benefits to borrowers, schools, and school-affiliated organizations. There has also been a rapid growth in private alternative loans marketed by many of the same lenders participating in the FFEL Program. Special relationships between schools and lenders have developed, jeopardizing a borrower's right to choose a FFEL lender and undermining the student financial aid administrator's role as an impartial and informed resource for students and parents working to fund postsecondary education.

During the negotiated rulemaking discussions, several negotiators expressed concern about the impact that the proposed regulations might have on the numerous business arrangements

between schools and financial institutions, and recommended that any regulations listing prohibited and permissible activities be based on a limited interpretation of the applicable statutory language. Another negotiator suggested that the regulations could have a "chilling effect" on school and lender relationships. A couple of negotiators argued that the intent of the statutory prohibition of lender and guaranty agency inducements was not to curtail competition for market share, but to prevent unnecessary borrowing that would not have occurred if not for the incentive, and that given the current FFEL annual loan limits and the cost of education, borrowers were borrowing due to high levels of unmet need rather than any incentives being provided. One negotiator argued that inducements to borrowers were a problem only if the inducement resulted in harm to the individual or raised credibility issues about the loan process.

Other negotiators expressed the view that, because of improper inducements, borrowers were actively being "steered" by schools to particular lenders and argued that the credibility of the loan process was an issue that the Department needed to address. One negotiator contended that inducements to borrowers created unequal terms to borrowers in the FFEL Program and appeared to operate as "redlining" because the inducements were often based on school loan volume, the volume of large dollar loans, or a school's cohort default rate.

A couple of negotiators recommended that, rather than attempting to identify an exhaustive list of inducements, the regulations should simply provide illustrative examples of acceptable relationships between schools and lenders, so that future program developments would not necessarily require a change to the regulations.

Negotiators with expertise in guaranty agency operations asked the Department to make it clear that school involvement in, and guaranty agency financial support of, guaranty agency advisory committee activities would continue to be permissible because of the importance of those activities to FFEL Program administration. One of these negotiators also recommended that the list of permissible activities for guaranty agencies be expanded to permit additional training and outreach activities to avert defaults authorized under the HEA. Another of these negotiators asked that the regulations make a clear distinction between contractual, third-party servicer agreements between a guaranty agency and school that are paid at the market

rate, and the limited emergency assistance offered by lenders and guaranty agencies to schools at no cost or at less than a market rate. This same negotiator asked the Department to clarify that a guaranty agency or school's compliance with state administered programs or requirements did not present an inducement-related conflict.

A couple of negotiators recommended that the Department clarify the nature of the emergency situation under which a lender or guaranty agency could offer assistance to a school in fulfilling its financial aid functions at little or no cost. The negotiators noted that the definition of an "emergency" is subjective, and should not excuse a school from complying with the requirement that it be administratively capable to participate in the Title IV programs, which includes retaining sufficient, trained staff during peak processing periods. They recommended that the Department specify that an "emergency" cannot be an annual or recurring event. The Department specifically solicits comments on whether an "emergency" should be limited to a State- or Federally-declared natural or national disaster that affects a school or whether an "emergency" should encompass broader circumstances.

Several negotiators with expertise in lender and guaranty agency operations submitted counter-proposals to the Department's proposed regulatory language. These alternative proposals would have significantly expanded the lists of permissible activities for lenders and guaranty agencies. The Department did not accept these counter-proposals because they would have allowed activities and payments that the Department believes are not appropriately performed by lenders and guaranty agencies. These alternative proposals would: Permit lenders to pay for meals and refreshments, lodging, and transportation costs for employees of schools and school-affiliated organizations equivalent to those permitted to be paid by guaranty agencies; incorporate into the regulations the detailed listing of comparable services provided by the Department to Direct Loan schools that was published in a Notice of Proposed Rulemaking on August 10, 1999 (64 FR 43428, 43429-43430); permit lenders to pay reasonable loan application "referral" fees to unaffiliated parties in addition to other lenders; expand permissible borrower repayment incentive programs to include loan forgiveness benefits for academic achievement and certain kinds of

employment; and prohibit philanthropic giving by lenders and guaranty agencies in exchange for application referrals, or a specific volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders. The proposal would also have incorporated into the regulations selected paragraphs from the Department's DCL 89-L-129/S-55/G-157, February 1989.

A couple of negotiators voiced concern about the impact of the proposed treatment of philanthropic giving by lenders on general philanthropic activities supporting postsecondary institutions by financial institutions.

Several negotiators objected to the Department's proposal to include enforcement-related provisions in the proposed regulations. One negotiator stated that the "rebuttable presumption" language was problematic because the statutory language governing prohibited inducements requires a demonstration that the inducement was provided in exchange for loans or loan volume. The same negotiator stated that enforcement would be better enhanced by clear regulations that define terms and explain permissible and impermissible activities. Several negotiators also objected to the inclusion of the FTC Holder Rule provision into the proposed regulations. One negotiator argued that these proposed regulations converted what was a lender eligibility issue into a borrower right and put lenders at risk simply by being on a school's preferred lender list. The negotiator also stated that it would lead to nuisance litigation by borrowers. The negotiators questioned why an inducement infraction by a lender should lead to a loss of reinsurance and questioned the basis of the proposed provision that denied claim payment to a lender and reinsurance to the guaranty agency if it was determined that the loan was made based on an impermissible inducement.

The Department believes that the proposed regulations adequately implement the statutory requirements in the HEA's prohibited inducement provisions and does not believe it will affect unrelated contracts or agreements between postsecondary institutions and financial institutions or general philanthropic giving by financial institutions. Some negotiators believed that borrowers are being inappropriately steered to various lenders through the use of inducements provided by lenders to schools and that these activities, if left unchecked, deny borrowers their choice of lender and undermine the credibility of the FFEL Program. The Secretary, through these proposed

regulations, is enhancing the borrower's choice of lender and providing for the disclosure of appropriate information.

The Department believes that the proposed regulations provide clear and detailed examples of prohibited inducements and improper activities based on previously published guidance with some modifications to reflect changes that have occurred in the FFEL program. The proposed regulations would retain the Department's long-standing policy distinction between permissible activities by lenders and guaranty agencies in recognition of their different roles in the FFEL program. The Department has not, however, authorized lenders or guaranty agencies to provide staff assistance to schools except in an emergency, which must be short-term and *nonrecurring*. As noted earlier, one negotiator asked the Department to provide a specific exemption from the inducement restrictions for State-established programs or requirements. However, such an exemption is not authorized under the HEA. The prohibition on improper inducements in sections 428(b)(3) and 435(d)(5)(A) of the HEA applies to State guaranty agencies, lenders, and institutions, as well as to all other participants in the FFEL program. Based on these current statutory provisions, the Department recently sent letters to two State guaranty agencies noting that State authorized programs those agencies administer could create an improper inducement, because those programs potentially provide benefits to institutions that participate in the State guaranty agency's guarantee program and deny benefits to institutions that participate in other guaranty agencies' programs. The proposed regulations would reflect the continued prohibition of such programs in proposed section 682.410(e)(1)(i)(B) and (e)(1)(ii).

The proposed regulations would adopt a modified version of the Department's prior policy, under which "reasonable" application referral fees can be paid to a nonparticipating lender or to another participating FFEL lender by prohibiting all such payments to a lender or any other entity. The Department believes that there is no longer a need for payment of such fees in the current FFEL market and that lender payment of such fees to school-affiliated organizations and other unaffiliated parties are a significant problem in the FFEL Program. In addition, in an attempt to avoid the prohibition on inducements, lenders have tried to classify fees that are based on success in securing loan applications or the size and characteristics of loans

disbursed as “referral” or “marketing” fees. Compensation or fees based on the number of applications or the volume of loans made or disbursed are improper, regardless of label, under the Department’s current and prior policy and would continue to be improper under these proposed regulations. Lenders are free, as they have been historically, to continue to contract for general marketing services, provided those services are not compensated based on the number of applications, or the volume of loans made or disbursed.

The proposed regulations do not incorporate the list of services the Department provides to Direct Loan schools that was published in the August 10, 1999 notice of proposed rulemaking as was requested by some of the negotiators. As the Department made clear during the negotiated rulemaking discussions, the Department would not want to limit itself or the lending community by codifying a list of services that cannot be easily updated and therefore the proposed regulations allow the use of other forms of public announcement.

The proposed regulations also would not expand the list of permissible lender repayment incentive programs that are based strictly on a borrower establishing a successful payment pattern in the repayment of a loan to include “loan forgiveness” based on academic achievement or employment in a particular field. The Department believes that repayment incentive programs do not represent a prohibited inducement if they are conditioned on the borrower’s timely repayment of the loan and borrower receipt of the benefit is not coincidental to the loan origination process. The Department believes that the forms of loan forgiveness described by some of the negotiators would be an inducement offered by lenders to market FFEL loans.

Finally, the Department believes that the addition of the enforcement provisions is necessary to clarify and strengthen the Department’s authority to enforce the regulations related to the use of improper inducements. The proposed regulations will result in more effective and fair enforcement of these restrictions. In response to the negotiators’ concerns about the placement of the rebuttable presumption provision outside the formal administrative penalty process, the Department revised the proposed regulations to incorporate that provision into the regulations that govern formal administrative proceedings and to clarify that the rebuttable presumption applies only when the Secretary takes a formal administrative action against a

lender or guaranty agency. As the Department pointed out during the negotiated rulemaking discussion, violations of the prohibited inducement provisions are difficult for the Department to enforce. It is virtually impossible for the Department to prove the relationship between the parties when the documentation is under the control of the two parties and the Department cannot issue subpoenas to compel testimony. To enforce these provisions more effectively, the Department must be able to identify a connection between certain activities and loans. The Department believes that the adoption and use of a rebuttable presumption will improve the Department’s ability to enforce the prohibition on improper inducements while protecting the appropriate due process rights of lenders and guaranty agencies.

The Department’s proposal to include violations of the prohibited inducement provisions in § 682.406 as a condition of reinsurance codifies the Department’s existing policy and practice when it documents violations of the prohibited inducement provisions.

Finally, the Department believes that the proposed change to expand the protections provided by the FTC’s Holder Rule by including a form of that rule in the proposed regulations will allow borrowers to assert any legal rights they may have if they have been harmed in a situation in which the lender has offered or provided an improper inducement. Moreover, by applying the FTC’s Holder Rule to all loans, irrespective of the type of school attended by the borrower, the proposed regulations will ensure that all FFEL borrowers have the same legal rights.

Eligible Lender Trustees (ELTs) (§§ 682.200 and 682.602)

Statute: The Third Higher Education Extension Act of 2006 (HEA Extension Act) (Pub. L. 109–292) amended the definition of *lender* in section 435(d)(2) of the HEA to prohibit new ELT relationships and restrict existing ELT relationships by imposing limits on school or school-affiliated organizations that make or originate loans through an ELT in the FFEL Program.

Current Regulations: The definition of *lender* currently in § 682.200 does not reflect these new restrictions on ELT relationships in the FFEL Program. The current regulations also do not contain a definition of *school-affiliated organizations*.

Proposed Regulations: The changes in proposed § 682.200 implement the HEA Extension Act by amending the definition of *lender* in § 682.200 to

prohibit a FFEL lender from entering into a new ELT relationship with a school or a school-affiliated organization after September 30, 2006. ELT relationships in existence prior to that date would be allowed to continue with certain restrictions. The proposed regulations would also implement the HEA Extension Act by creating a new section (formerly reserved § 682.602) that applies the same limits imposed on FFEL school lenders by the Higher Education Reconciliation Act (HERA) (Pub. L. 109–171) to school and school-affiliated ELT arrangements entered into after January 1, 2007. Lastly, proposed § 682.200 would define the term *school-affiliated organization* as any organization that is directly or indirectly related to a school and includes, but is not limited to alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

Reasons: We are proposing to amend the definition of *lender* in § 682.200 and add new § 682.602 to reflect the changes made to section 435(d)(2) of the HEA by the HEA Extension Act. Because the HEA Extension Act did not define “school-affiliated organization,” but included these organizations in imposing limits on ELT arrangements, we developed and are proposing to add a definition of this term to § 682.200 to add clarity to the regulations. During the negotiated rulemaking, several non-Federal negotiators expressed concern about the phrase “directly or indirectly related to a school” in the definition of *school-affiliated organization*. They felt that we should qualify this phrase to make it clear that the definition applies only to organizations that are under the common control and ownership of a school. The Department disagreed with this suggestion, because many organizations such as alumni and social organizations are clearly school-affiliated but may not be under the control and ownership of a school.

Frequency of Capitalization (§ 682.202)

Statute: Section 428C(b)(4)(C)(ii)(III) of the HEA provides for the capitalization of interest on Consolidation Loans.

Current Regulations: Under current § 682.202(b)(3), a lender may capitalize unpaid interest as frequently as every quarter. Capitalization is also permitted when repayment is required to begin or resume.

Proposed Regulations: Under proposed § 682.202, the frequency of capitalization on Federal Consolidation Loans would be limited to quarterly, except that a lender could only capitalize unpaid interest that accrues

during an in-school deferment at the expiration of the deferment. These proposed regulations would be consistent with the current practice in the Direct Loan Program.

Reasons: The proposed regulations would align the FFEL Program with the Direct Loan Program. Capitalization would take place when the borrower changes status at the end of a period of authorized in-school deferment.

This change was proposed by non-Federal negotiators to protect borrowers that previously consolidated their loans while in an in-school status to lock in low interest rates. Statutory provisions, subsequently repealed by the HERA, allowed in-school FFEL borrowers to request an early conversion to repayment status. Unlike Direct Loan borrowers, FFEL borrowers were not able to consolidate their loans while they were in an in-school status. By converting to repayment status, these borrowers could consolidate their loans. Consolidation Loans received by these borrowers were then immediately placed into in-school deferments. The proposed regulations would limit when the interest on these loans could be capitalized.

Loan Discharge for False Certification as a Result of Identity Theft (§§ 682.208, 682.211, 682.300, 682.302 and 682.411)

Statute: Section 437(c) of the HEA authorizes a discharge of a FFEL Loan or a Direct Loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft.

Current Regulations: Section 682.402 of the FFEL Program regulations and § 685.215 of the Direct Loan Program regulations authorize a discharge of a loan if the borrower's eligibility to borrow the loan was falsely certified because the borrower was the victim of the crime of identity theft. Section 682.402 requires that, before the borrower's obligation is discharged, the borrower must provide the loan holder a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of the crime of identity theft. A Direct Loan borrower must provide the Secretary the same documentation to establish eligibility for the discharge.

Proposed Regulations: The proposed regulations do not include any changes to the eligibility requirements with which a borrower must comply to obtain a loan discharge as a result of the crime of identity theft. However, the proposed regulations § 682.208 would allow a lender to suspend credit bureau reporting on a loan for 120 days while

the lender investigates a borrower's claim that he or she is the victim of identity theft. The proposed regulations in § 682.211 would allow a lender to grant a 120-day administrative forbearance to a borrower upon the lender's receipt of a valid identity theft report as defined under the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau of an allegation of identity theft while the lender determines the enforceability of the loan. Under the proposed changes in §§ 682.208 and 682.211, the lender could no longer collect interest and special allowance payments on the loan if the lender determines that the loan is unenforceable. The proposed regulations would allow the lender a three-year period, however, to submit a claim if, within that time period, the lender receives from the borrower a local, State, or Federal court verdict of judgment conclusively proving that the borrower was the victim of the crime of identity theft. The proposed regulations in §§ 682.300 and 682.302 would clarify that the Secretary terminates the payment of interest benefits and special allowance on eligible FFEL Program Loans consistent with the changes we are proposing in § 682.208. Lastly, proposed regulations in § 682.411 would specify that the HEA does not preempt provisions of the Fair Credit Reporting Act that provide for the suspension of credit bureau reporting and collection on a loan after the lender receives a valid identity theft report or notification from a credit bureau.

Reasons: Interim final regulations published on August 9, 2006 (71 FR 64377) and final regulations published on November 1, 2006 (71 FR 45665) implemented changes made to the HEA by the HERA to authorize a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft. Although some of the negotiators had concerns with these earlier regulations, the Department believes that the current regulations properly reflect the statutory provision and therefore did not propose any changes.

Some non-Federal negotiators asked the Department to add regulations that would allow loan holders to take actions required by other Federal laws when they receive an allegation that a loan was certified due to a crime of identity theft. The Department agreed. The proposed regulations in §§ 682.208 and 682.211 would allow for the suspension of credit bureau reporting and collection activity, respectively. The proposed regulations in § 682.411 would allow lenders to comply with the Fair Credit

Reporting Act and stop credit bureau reporting on delinquent loans while the lender investigates an alleged identity theft without violating the FFEL Program regulations.

Preferred Lender Lists (§§ 682.212 and 682.401)

Statute: Section 432(m) of the HEA requires the Secretary, in consultation with guaranty agencies, lenders, and other organizations involved in student financial assistance to develop common application forms and promissory notes, or MPNs for use in the FFEL Program. These forms must be formatted to require the applicant to clearly indicate a choice of lender. Under Section 479A(c) of the HEA, schools are authorized to refuse to certify, on a case-by-case basis, a statement that permits a student to receive a loan. The reason for the school's refusal must be documented and provided to the student in writing. In exercising this authority, a school may not discriminate against any borrower.

Current Regulations: Many schools provide lists of preferred or recommended lenders to students and prospective borrowers. There are no current regulations that govern a school's use of such lists. Current § 682.603(e) authorizes a school to refuse to certify a borrower's eligibility for a FFEL Loan but specifies that, in exercising that authority, a school must not engage in any pattern or practice that would result in denial of a borrower's access to loans on the basis of certain factors including the borrower's choice of a particular lender or guaranty agency.

Proposed Regulations: Section 682.212(h)(1) of the proposed regulations specifies the requirements that a school must meet if it chooses to provide a list of recommended or preferred FFEL lenders for use by the school's students and their parents, and prohibits the use of a preferred lender list to deny or otherwise impede the borrower's choice of lender. Section 682.212(h)(1)(ii) of the proposed regulations would require a school using a preferred lender list to include on the list at least three lenders that are not affiliated with each other. Section 682.212(h)(1)(iii) of the proposed regulations would also prohibit a school from including lenders on the list that have offered, or been solicited by the school to offer, financial or other benefits to the school in exchange for placement on the list. The proposed regulations further provide, in § 682.212(h)(2)(iii), that if a school has listed a lender on its preferred lender list and the lender offers specific

borrower benefits (such as lower fees or interest rates) to the school's borrowers, the school must ensure that the lender provides the same benefits to all borrowers at the school. Section 682.212(h)(2) of the proposed regulations would also require the school to disclose to prospective borrowers, as part of the list, the method and criteria the school used to select any lender that it recommends or suggests, to provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders, and to include a prominent statement, in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders. Section 682.212(h)(2)(v) of the proposed regulations would also prohibit a school from assigning, through award packaging or other methods, a lender to first-time borrowers and from delaying certification of a borrower's loan eligibility to a lender because that particular lender is not on the school's preferred lender list. The proposed regulations would also revise § 682.603(e) to further clarify that a school may never refuse or delay certification of a borrower's loan eligibility because of the borrower's choice of lender.

Reasons: The Department believes that it is necessary at this time to establish rules to govern a school's optional use of a preferred lender list to preserve a borrower's right to choose a FFEL lender. These proposed regulations will help ensure that such lists are a source of useful, unbiased consumer information that can assist students and their parents in choosing a FFEL lender from the over 3,000 lenders that participate in the FFEL Program.

The Department has not previously regulated or restricted the use of lists of preferred or recommended lenders. With student loan defaults a national concern in the early 1990s, some schools began recommending to borrowers that they use lenders that the school believed provided high-quality customer service in loan origination and servicing, with the goal of preventing loan delinquency and default and its negative consequences for borrowers and schools. With the significant growth of loan volume in recent years, and increased competition among FFEL lenders, the focus of school selection of preferred lenders has shifted. Lenders began offering web-based and proprietary applications and electronic data transmission to reduce the

administrative burden for schools and borrowers and the processing time necessary to secure a student loan. Increased competition among FFEL lenders has also led to a proliferation of student loan borrower benefits, such as reduced interest rates and fees. Given the growing complexity surrounding the FFEL program, students and parents have been relying extensively on financial aid administrators as a source of assistance to identify lenders that offer the best service and benefits to borrowers. The use of preferred lender lists and other consumer information related to the student loan process has played a useful role in assisting financial aid officers in dealing with the large volume of requests for information and assistance.

There is increasing evidence, however, that the preferred lender lists maintained by many schools do not represent the result of unbiased research by the school to identify the lenders providing the best combination of service and benefits to borrowers. There has also been increasing evidence that some schools have been restricting the ability of borrowers to choose the lender of their FFEL Program loan. The Department has identified instances in which a school selected the lender for the borrower as part of the financial aid award packaging process, provided borrowers with an electronic link to only one lender after recommending a loan as part of the award package, identified only one lender as their preferred lender in their published financial aid information, or, if the school was an authorized FFEL Program lender, directed the aid administrator to use the school as the only lender. Some other schools have significantly delayed or declined to provide the necessary loan eligibility certification to a lender for a student or parent borrower because the lender was not on the school's preferred list or did not participate in the electronic processing system that the school used. When these situations were identified, and in response to student and parent complaints, the Department has investigated and addressed them on a case-by-case basis, and reminded the school of its legal responsibilities. Over the last three years, the Department has also used Department-sponsored meetings and other conferences to highlight inappropriate and, in some cases, illegal practices related to the use of preferred lender lists. Unfortunately, many of these practices have continued, despite the Department's efforts.

Recent Department investigations have shown that, in some cases, a school's selection of a preferred or recommended lender was the result of

a lender's offer of prohibited inducements that took the form of direct payments or other benefits to the school, its students, or its employees rather than the result of the school's effort to research and analyze the various lender offerings to its students. In 1995, the Department reminded schools of the prohibited inducement provisions in the law and the sanctions attached to them, and warned schools against such activities with both FFEL school lenders and non-school FFEL lenders (DCL 95-G-278). Despite these actions, the Department's Office of Inspector General reported to the Secretary in August 2003 that these relationships were becoming an increasing problem in the FFEL program, and recommended that the Secretary provide additional guidance to both schools and lenders. The continuing and growing concern about these relationships led the Secretary to decide to address preferred lender lists as part of this rulemaking process.

These proposed regulations are similar to the proposals submitted by the Department to the negotiating committee during the negotiated rulemaking process. Some negotiators questioned the need to regulate in this area, stating that it would be highly intrusive and advising the Department that it would be better to address the use of preferred lender lists through training and enforcement as part of school reviews and audits. Another negotiator recommended that any proposed regulations on this topic be limited to schools that used a preferred lender list to actively impede a borrower's choice of lender. Some negotiators thought that the Secretary should consider prohibiting the use of preferred lender lists entirely while other negotiators endorsed the continued use of preferred lender lists as a helpful tool for both schools and prospective borrowers. Several negotiators expressed the view that regulations in this area would be administratively burdensome and could result in schools discontinuing the use of such lists. Some negotiators expressed concern that if schools discontinued using a preferred lender list, students would be subject to increased direct marketing from student loan lenders, which they viewed as counterproductive to the goal of educating students and parents about the student loan process.

Some negotiators stated that the Department's proposed requirement of a minimum number of three lenders on any list was arbitrary. A couple of those negotiators expressed concern that some schools, particularly small schools, would have difficulty complying with

the requirement because only one lender was willing to make FFEL loans to students at the schools. A group of negotiators submitted a counter-proposal to exempt schools from the requirement that a preferred lender list include at least three lenders if the school: Had less than 500 borrowers entering repayment in a given year; had issued a request for proposal to lenders to which there were at least three responses; recommended a certain lender in accordance with State law; or was a Historically Black College or University or a Tribally-controlled College or University. One other negotiator strongly recommended that the Department require schools to provide information about their business dealings with each of the lenders on the preferred lender list. However, several school-based negotiators stated that such a requirement was administratively unfeasible and would not be helpful to students because there were generally many business arrangements between schools and financial institutions that were not related to the school's participation in the FFEL Loan Program and over which student financial aid personnel have no control. These same negotiators also objected to the Department's proposal that, in addition to disclosing the method and criteria used by the school to choose the lenders on the school's preferred lender list, the school be required to provide comparative information on the interest rates and other borrower benefits offered by those lenders. The school-based negotiators stated that this requirement would represent a significant administrative burden and that schools could not ensure the accuracy of the information on borrower-benefit offerings. Many negotiators objected to the Department's proposed prohibition against a school soliciting borrower benefits from a lender in exchange for the lender's placement on the school's preferred lender list. These negotiators argued that one of a school's primary reasons for providing a list of lenders was to identify lenders offering the best interest rates and borrower benefits possible for the school's borrowers, and believed that a school's efforts to negotiate better benefits for their borrowers should not be restricted.

The Department's proposed regulations would require that any school list of recommended lenders contain at least three lenders to provide borrower choice. To further ensure that the listed lenders provide an actual choice for a borrower, the proposed regulations provide that the three

lenders must not be affiliated with each other. The Department expects a school to collect and retain a statement certifying to this fact, upon which the school can rely, from each of the lenders they propose to include on their list. The Department is not proposing any exemption to the minimum of three lenders. The Department also believes that the disclosure of supporting information and data with the list is the most efficient and effective method to ensure that borrowers make informed consumer decisions. The Department understands that providing comparative interest rate and benefit information, in addition to describing the method and criteria used to select lenders for the list, will involve additional efforts for schools in preparing and providing a preferred lender list. To assist schools with this effort, the Department is developing a model format that a school may use to present this information. The Department will be sharing a draft of the model format with representatives of school, lending and guaranty agency communities as well as students and parents to solicit their thoughts and suggestions. The draft model format will then be revised and submitted for clearance to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995. This clearance process will afford additional opportunities for public comment on the draft model format. The Department plans to submit a model format form to OMB for its review when these proposed regulations are published in final form.

The Department also agrees that schools should not be discouraged from negotiating with lenders for the best possible interest rates and borrower benefits for their borrowers. As a result, the proposed regulations, while continuing to prohibit a school's solicitation of payments and other benefits from a lender for the school or its employees in exchange for the lender's placement on the school's list, would not prohibit a school from soliciting lenders for borrower benefits in exchange for placement on the school's list.

Executive Order 12866

Regulatory Impact Analysis

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

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will 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. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations address a broad range of issues affecting students, borrowers, schools, lenders, guaranty agencies, secondary markets and third-party servicers participating in the FFEL, Direct Loan, and Perkins Loan programs. Prior to the start of negotiated rulemaking, through a notice in the **Federal Register** and four regional hearings, the Department solicited testimony and written comments from interested parties to identify those areas of the Title IV regulations that they felt needed to be revised. Areas identified during this process that are addressed by these proposed regulations include:

- Duplication of effort for loan holders and borrowers in the deferment granting process. The Department has proposed changes that allow Title IV loan holders to grant a deferment under a simplified process.
- Difficulty experienced by members of the armed forces when applying for a Title IV loan deferment. The Department has proposed changes that allow a borrower's representative to apply for an armed forces or military service deferment on behalf of the borrower.

- Confusion regarding the eligibility requirements that a Title IV loan borrower must meet to qualify for a total and permanent disability loan discharge. The Department has

proposed changes to clarify these requirements.

- Lack of entrance and exit counseling for graduate and professional PLUS Loan borrowers. The Department has proposed changes that require entrance counseling and modified exit counseling.

- Costs associated with capitalization on Federal Consolidation Loans for borrowers who consolidated while in an in-school status. The Department has proposed changes to limit the frequency of capitalization on such loans.

Based on its experience in administering the HEA, Title IV loan programs, staff with the Department also identified several issues for discussion and negotiation, including:

- Risk to the Federal fiscal interest associated with the total and permanent disability discharge on a Title IV loan. The Department has proposed changes to require a prospective three-year conditional discharge so that the applicant's condition can be monitored before the borrower receives a Federal benefit.

- Enforcement issues and risk to the Federal fiscal interest associated with electronically-signed MPNs that have been assigned to the Department. The Department has proposed changes that require loan holders to maintain a certification regarding the creation and maintenance of any electronically-signed promissory notes and that require loan holders to provide disbursement records should the Secretary need the records to enforce an assigned Title IV loan.

- Excessive collection costs charged to defaulted Perkins Loan borrowers. The Department has proposed changes that cap collection costs in the Perkins Loan Program.

- Unreasonable risk of loss to the United States associated with the more than \$400 million in uncollected Perkins Loans that have been in default for 5 years or more. The Department has proposed changes that provide for mandatory assignment of older, defaulted Perkins loans at the request of the Secretary.

- Program integrity issues associated with prohibited incentive payments and other inducements by lenders and guaranty agencies. The Department has proposed changes that explicitly identify prohibited inducements and allowable activities.

- Abuse associated with the use of lists of preferred or recommended lenders. The Department has proposed changes that ensure such lists are a source of useful, unbiased consumer information that can assist students and their parents in choosing a FFEL lender.

Lastly, regulations were required to implement The HEA Extension Act, which made changes to eligible lender trustee relationships as discussed earlier.

Regulatory Alternatives Considered

A broad range of alternatives to the proposed regulations was considered as part of the negotiated rule-making process. These alternatives are reviewed in detail elsewhere in this preamble under the *Reasons* sections accompanying the discussion of each proposed regulatory provision.

Benefits

Many of the proposed regulations codify existing sub-regulatory guidance or make relatively minor changes intended to establish consistent definitions or streamline program operations across the three Federal student loan programs. The Department believes the additional clarity and enhanced efficiency resulting from these changes represent benefits with little or no countervailing costs or additional burden.

Benefits provided in these regulations include: The clarification of rules on preferred lender lists and prohibited inducements; simplification of the process for granting deferments; changes to the process of granting loan discharges that reduce burden for loan holders, protect borrowers from unnecessary collection activities, and simplify the application process; limits on the frequency with which FFEL lenders can capitalize interest on Consolidation Loans; limits on the amount of collection costs charged to defaulted Perkins Loan borrowers; and the mandatory assignment to the Department of longstanding defaulted Perkins Loan with limited recent collection activity. Of these proposed provisions, only the mandatory assignment of defaulted Perkins Loans has a substantial economic impact—although the single-year impact is less than the \$100 million threshold.

Preferred Lender and Prohibited Inducements: The proposed regulations include a number of provisions affecting the use of preferred lender lists and lender inducements. The use of preferred lender lists by schools is completely optional; while the Department encourages maximum disclosure of loan information to borrowers, a school can avoid the minimal costs associated with the disclosures required by the proposed regulations by simply opting not to have a preferred lender list. Accordingly, there are no mandated costs for these proposals.

The student loan industry features high competition among loan providers, using an array of interest rate discounts and other borrower benefits to attract volume. By increasing the amount of information available to borrowers and clarifying permissible relationships between lenders and schools, the proposed provisions are expected to improve market transparency and remove transaction barriers for loan borrowers, improving market openness and efficiency for both borrowers and loan providers.

The proposed regulations generally prohibit lenders and guaranty agencies from regularly providing schools with personnel and other support services for loan application and other processing activities. The provision of these services appears to have been a relatively standard practice in some institutional sectors. To the extent schools must now pay for this activity themselves, the regulations do not increase costs but rather shift costs from lenders to schools. The Department is interested in comments related to any potential burden associated with this provision. The HEA and implementing regulations currently require schools to maintain the administrative capability to operate Title IV programs. The proposed regulations are consistent with this requirement by prohibiting lenders and guaranty agencies from providing schools with personnel and other support services and activities in exchange for loan applications.

Simplification of Deferment Process: In general, current regulations require each lender to determine a borrower's qualification for a deferment and require a borrower to initiate the application for a military service deferment. The proposed regulation allows a lender to use the determination of deferment eligibility made by another eligible lender and allows a borrower's representative to apply for a military service deferment. In both instances, no additional costs are incurred. In the deferment-granting process, a lender must still make a determination, but responsibility may be shifted among individual lenders. In cases in which a loan is transferred to a different lender in the middle of a deferment period, the new loan holder will not need to make a separate initial determination of eligibility. Similarly, under the proposed regulations, a single individual will still submit an application for military service deferment; the proposal merely allows individuals dispatched on active duty to designate a representative to submit their application.

Changes to Loan Discharge Provisions: The proposed regulations streamline and simplify the process for applying for death and disability loan discharges and ensures regulations are internally consistent and in compliance with other statutes, including the Fair Credit Reporting Act. Under current regulations, applicants must submit an original or certified copy of the death certificate in order to receive a loan discharge; the proposed regulation would allow the use of an accurate and complete photocopy of the original or certified copy of the death certificate. The workload to the applicant is unchanged and no additional costs are incurred. The proposed regulations for the total and permanent disability discharges also standardize definitions and dates for the conditional discharge period and require additional disclosure of information to borrowers. The proposed regulations require lenders to notify borrowers that additional payments are not required after the date a discharge application has been submitted. As a lender must already submit the application to the Secretary, the cost of electronically notifying the borrower of the repayment requirement is negligible. Note: The proposed regulations do not change the borrower's repayment responsibility and do not affect the cash flows of the loan program.

Reasonable Collection Costs on Defaulted Perkins Loans: The HEA and implementing regulations specify and limit the level of collection costs on defaulted loans payable by a borrower in the FFEL and Direct Loan programs; similar restrictions do not exist for the Perkins Loan Program. There have been several reports that some schools assess excessive collection costs to defaulted borrowers. The Department does not have data to support or deny this assertion and is interested in any comments or data on this issue. In the absence of data, the Department assumes there is no measurable difference between the collection cost rate charged borrowers in the overall Perkins Loans program and that of the other Federal student loan programs. Given this assumption, the regulations are estimated to have no measurable economic impact.

Mandatory Assignment of Certain Defaulted Perkins Loans: As discussed elsewhere in this preamble, the proposed regulations would require institutions to assign to the Department any Perkins Loans that have been in default for 7 or more years and have not had any collection activity for at least 12 months. Department data indicate that Perkins Loan institutions hold more

than \$400 million in uncollected loans that have been in default for 5 years or more. Since Perkins Loans are made with a combination of Federal and institutional funds, these uncollected loans present an unreasonable risk of loss to the United States.

The Department believes its use of collection tools such as Federal offset will substantially improve the recovery rate on these older loans, as Perkins institutions lack access to these tools. Accordingly, the Department has long encouraged voluntary assignment of these longstanding non-performing defaulted loans. Despite this encouragement, and notwithstanding substantial simplification of the voluntary assignment process, the number and outstanding balance of older, defaulted Perkins Loans have continued to increase.

Perkins Loans are made from a capital fund held by schools, which generally includes 75 percent Federal funds and 25 percent institutional matching funds. As discussed below, the proposed regulations, once implemented, could increase collections on defaulted loans by \$15 million over the next 10 years. Under the assignment process, 100 percent of these collections become Federal revenue. In the absence of the regulations, given the age of the loans and the inability of the schools to collect, the Department assumes there would be no Federal or institutional revenue. The proposed regulations therefore would have minimal economic impact on schools. The impact on borrowers is that the increased use of Federal tools will require borrowers to fulfill their obligation to repay their loans.

To estimate the impact of this proposed change, the Department used a statistically representative sample from records in NSLDS to identify outstanding Perkins Loans that have been in default for at least 7 years and for which the outstanding balance has not decreased in at least 12 months. The Department identified \$23 million in outstanding Perkins Loans that meet these criteria and so would be subject to mandatory assignment. This portfolio increases approximately \$1 million annually under current regulations. Historically, using the credit reform discounting method in which future collections are discounted to reflect a current year cost, the Department collects approximately 80 percent of outstanding principal on loans held in-house. If the \$23 million of assignable Perkins Loans produced the same collection level, government revenues would increase, on a discounted basis, by \$18 million over the next

approximately 10 years as borrowers repay their loans. This level of collection is unlikely as these borrowers have been out of repayment for many years. This amount was reduced by \$3 million to reflect the Department's standard collections costs. Accordingly, the Department estimates the proposed regulation will increase net collections and reduce Federal costs by \$15 million.

Costs

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and schools must already have systems and procedures in place to meet program eligibility requirements. These regulations generally would require discrete changes in specific parameters associated with existing guidance—such as the provision of entrance counseling, the retention of records, or the submission of data to NSLDS—rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions—primarily the mandatory assignment of Perkins Loans and the addition of entrance counseling for graduate and professional PLUS Loan borrowers—will result in additional workload for staff at some institutions of higher education. (This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of this preamble.) Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In this case, however, these costs are not incurred because other provisions in the proposed regulations—primarily changes involving the maximum length of loan period—result in offsetting workload reductions that greatly outweigh the estimated additional burden. The Department estimates annual net burden for institutions of higher education related to the Title IV student loan programs will decrease by 180,000 hours as a result of the proposed regulations. While regulations related to

mandatory assignment result in a net increase in burden under the Perkins Loan Program, schools participating in the Perkins Loan Program also typically participate in either the FFEL or Direct Loan Program, both of which have net burden reductions that outweigh the increase under the Perkins Loan Program. In addition, the estimated annual burden for Perkins Loan Program participants will drop dramatically after the first year, during which institutions will need to assign all outstanding loans that currently meet the requirements for mandatory assignment. In subsequent years, the number of loans assigned will be limited to those that newly meet the requirements.

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

Assumptions, Limitations, and Data Sources

Estimates provided above reflect a baseline in which the proposed changes implemented in these regulations do not exist. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a more robust analysis.

In developing these estimates, a wide range of data sources were used, including NSLDS data, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data on administrative burden at participating schools, lenders, guaranty agencies, and third-party servicers are extremely limited; accordingly, as noted above, the

Department is particularly interested in comments in this area.

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

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1 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. Savings are classified as transfers from program participants (borrowers in default).

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers.	\$15.
From Whom To Whom?	Defaulted Perkins Loan Borrowers to Federal Government.

Clarity of the Regulations

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

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

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

making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

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

A significant percentage of the lenders and schools participating in the Federal student loan programs meet the definition of “small entities.” While these lenders and schools fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

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

Paperwork Reduction Act of 1995

Proposed §§ 674.8, 674.16, 674.19, 674.38, 674.45, 674.50, 674.61, 682.200, 682.208, 682.210, 682.211, 682.401, 682.402, 682.406, 682.409, 682.411, 682.414, 682.602, 682.603, 682.604, 682.610, 685.204, 685.212, 685.213, 685.215, 685.301, 685.304 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.

Collection of Information: Perkins Loan Program, FFEL Program, and Direct Loan Program.

Sections 674.38, 682.210, and 685.204—Deferment

The proposed regulations in §§ 674.38 and 682.210 would allow FFEL lenders and schools that participate in the Perkins Loan Program to grant graduate fellowship deferments, rehabilitation training program deferments, unemployment deferments, economic hardship deferments and military service deferments based on information from another FFEL loan holder or from the Department. The proposed regulations in § 685.204 would permit the Department to grant a deferment on a Direct Loan based on information from a FFEL loan holder. Finally, the proposed regulations would allow a representative of the borrower to apply for a military deferment on a Perkins, FFEL or Direct Loan on behalf of the borrower. The proposed regulations would affect borrowers seeking a deferment and loan holders and servicers. This proposed change represents a decrease in burden because borrowers with more than one loan would no longer be required to gather and supply documentation to each loan holder in order to establish eligibility for a deferment. Conversely, loan holders would be able to rely on the determination of eligibility by another holder based on that holder's receipt and review of required documentation from the borrower. We estimate that the proposed changes will decrease burden for borrowers and loan holders (and their servicers) by 9,383 hours and 1,042 hours, respectively. Thus, we estimate a total burden reduction of 10,425 hours in OMB Control Numbers 1845-0019, 1845-0020, and 1845-0021.

The proposed change allowing a borrower's representative to apply for a military deferment on behalf of the borrower does not represent a change in burden. The deferment application and eligibility determination process would remain the same.

Sections 674.61, 682.402 and 685.212—Loan Discharge for Death

The proposed regulations would allow the use of an accurate and complete copy of the original or certified copy of the death certificate, in addition to the original or a certified copy, to support the discharge of a borrower's or parent borrower's Title IV loan. This proposed change represents a decrease in burden for the survivor of the borrower and the loan holder (or its servicer) because each party will now have increased flexibility in gathering

and reviewing documentation that supports a loan discharge based on the death of the borrower. We estimate that the proposed changes will decrease burden for borrowers' survivors and loan holders (and their servicers) by 3,410 hours and 2,273 hours, respectively. Thus, we estimate a total burden reduction of 5,683 hours. The proposed changes will be reflected in OMB Control Numbers 1845-0019, 1845-0020 and 1845-0021.

Sections 674.61, 682.402, and 685.213—Total and Permanent Disability Discharge

The proposed regulations restructure §§ 674.61, 682.402 and 685.213 to clarify the regulatory requirements for the total and permanent disability discharge process. The proposed changes require a borrower to complete a prospective conditional discharge period of three years from the date that the Secretary makes an initial determination that a borrower is totally and permanently disabled in order to qualify for the total and permanent disability discharge on his or her Perkins, FFEL or Direct Loan. Lastly, the proposed changes explicitly state that, in order to qualify for a discharge, the borrower must meet the definition of total and permanent disability under the Perkins Loan or Direct Loan regulations or the definition of totally and permanently disabled under the FFEL regulations and receive no further Title IV loans from the date the physician certifies the borrower's total and permanent disability on the discharge application. The proposed regulatory changes would affect Title IV borrowers seeking a total and permanent disability loan discharge, loan holders (and their servicers), and guaranty agencies.

The proposed changes would not constitute an increase in burden for borrowers because the application process and the eligibility requirements have not changed. The proposed changes would also not constitute an increase in burden for loan holders and guaranty agencies because these entities are not responsible for monitoring the borrower's status during the prospective conditional discharge period or for making a final determination of the borrower's eligibility for discharge. Changes to the Permanent and Total Disability Loan Discharge Application Form would need to be made, however, to state that the conditional discharge period would be prospective from the date of the physician's certification of the borrower's disability on the form. The Total and Permanent Disability Discharge Application currently in use will expire on May 5, 2008. Final

regulations implementing these provisions will be effective July 1, 2008. A revised Total and Permanent Disability Discharge Form associated with OMB Control Number 1845-0065 will be submitted for OMB review by January 31, 2008 thereby ensuring that a newly-approved form will be available for a borrower's use by the time final regulations are effective.

Sections 674.16, 682.208, 682.401 and 682.414—NSLDS Reporting Requirements

The proposed changes to §§ 674.16, 682.208, 682.401 and 682.414 require schools, lenders, and guaranty agencies to report enrollment and loan status information, or any other data required by the Secretary, to NSLDS by a deadline established by the Secretary. Requiring these entities to report information to NSLDS on a deadline established by the Secretary codifies existing Departmental practice and we believe that it will not result in an increase or decrease in burden; however we invite comments on this issue.

The proposed changes in § 682.401 that require a guaranty agency to report a borrower's enrollment status to the current holder of a loan within 30 days, instead of the existing 60-day timeframe, do not represent an increase in burden. Under current practice, 33 of the 35 existing guaranty agencies participate in a free service provided by the National Student Clearinghouse Total Enrollment Reporting Process (TERP). TERP already provides enrollment information to lenders and lender servicers on behalf of the guaranty agency within a 30-day period. The remaining two guaranty agencies are expected to enroll with TERP by the end of the year.

Sections 674.19, 674.50, and 682.414—Certification of Electronic Signature on Title IV Loan Program Master Promissory Notes (MPNs) Assigned to the Department

The proposed changes to §§ 674.19, 674.50 and 682.414 support the Department's efforts to enforce defaulted Perkins Loan or FFEL MPNs that are assigned to the Department by requiring that schools, lenders and guarantors create, maintain, and provide to the Secretary, upon request, an affidavit or certification regarding the creation and maintenance of electronic MPNs or promissory notes, including the authentication and signature process. The proposed changes in §§ 674.19 and 682.414 would also require schools and the holder of the original electronically signed FFEL MPN to retain an original of an

electronically signed MPN, and associated loan records, for three years after all the loans made on the MPN are satisfied. The proposed changes in §§ 674.50 and 682.414 would also require schools, lenders and guarantors to provide any record, affidavit or certification requested by the Secretary to resolve any factual dispute involving an electronically signed promissory note assigned to the Department, including testimony, if appropriate, to ensure admission of electronic loan records in litigation or legal proceedings to enforce a loan. The proposed changes would affect schools that participate in the Perkins Loan Program and FFEL lenders and guarantors.

The proposed changes represent an increase in burden for schools and FFEL lenders and guarantors by requiring the development of certifications regarding the creation and maintenance of the records associated with electronically signed MPNs. The proposed changes represent a further increase in burden by requiring that schools and lenders retain an original electronically signed MPN or promissory note for three years after all the loans on the MPN are satisfied, even after the loans are assigned to the Department. We estimate that the proposed changes will increase burden for schools, FFEL lenders, and guarantors by 2 hours, 322 hours, and 36 hours, respectively, based on the total number of Perkins and FFEL loans referred for litigation for the 2006–2007 period. Thus we estimate the total annual burden increase to be 360 hours. The increase as a result in the proposed changes will be reflected in OMB Control Numbers 1845–0019 and 1845–0020.

Sections 674.19, 674.50, and 682.409—Retention of Disbursement Records Supporting MPNs

The proposed changes to §§ 674.19 and 674.50 would require institutions that participate in the Perkins Loan program to retain disbursement records for each loan made to a borrower on a MPN until all the loans on the MPN are satisfied. The proposed changes in § 674.50 would also require an institution to submit disbursement records, upon request, for each loan made to a borrower on a MPN that has been assigned to the Department should the Department need the records to enforce the loan. The proposed changes represent an increase in burden for schools that participate in the Perkins Loan Program. Although Perkins Loan institutions are currently required to retain disbursement records for three years under 34 CFR § 668.24, the requirement to retain the disbursement

records for three years after the loan is satisfied is new. The requirement that an institution submit disbursement records, upon request, as part of the assignment process, is also new. We estimate that the proposed changes will increase burden by a total of 22 hours annually. The increase in burden as a result of the proposed changes will be reflected in OMB Control Number 1845–0019.

The proposed changes in § 682.409 would require a guaranty agency to submit a record of the lender's disbursement of Stafford and PLUS loan funds to the school for delivery to the borrower for each loan assigned to the Department. (FFEL lenders are already required to retain disbursement records under § 682.414(a)(4)(ii)). The proposed changes in § 682.409 would also require a guaranty agency to provide to the Secretary the name and location of the entity in possession of originals of electronically signed MPNs that have been assigned to the Department. In reviewing the proposed changes to § 682.409, we reexamined the existing burden reflected in OMB Control Number 1845–0020 and noted that no burden is currently associated with the FFEL mandatory assignment process. The Department has determined that the FFEL mandatory assignment process required under § 682.409 represents 2,380 burden hours for each guaranty agency for a total annual burden of 83,333 hours, which will be reflected in OMB Control Number 1845–0020. The proposed changes, which codify existing assignment procedures, are included in these burden hour calculations.

Sections 682.208, 682.211, 682.300, 682.302, 682.402, 682.411, and 685.215—Identity Theft

Interim final regulations published in August 2006 and final regulations published in November 2006 provided for a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft. We have decided against making changes to the regulations as published but are proposing regulations to provide lenders with relief from certain due diligence requirements on a loan when identity theft is alleged.

We are proposing changes in § 682.208 and § 682.211 to allow lenders to temporarily suspend credit bureau reporting and to grant a 120-day administrative forbearance, respectively, on a loan certified as a result of alleged identity theft while the lender investigates the situation. We are

proposing changes in §§ 682.300 and 682.302 to specify that the payment of interest and special allowance on eligible FFEL Program Loans must cease on the date the lender determines the loan is legally unenforceable based on the receipt of an identity theft report. Lastly, we are proposing changes in § 682.411 to permit a lender to take steps in accordance with the Fair Credit Reporting Act when the lender receives notice of an alleged identity theft. The proposed changes affect borrowers, lenders and guarantors.

The proposed changes are burden neutral. The Department's Inspector General has confirmed that very few Title IV student loans are falsely certified as the result of the crime of identity theft. The burden associated with the suspension of credit bureau reporting and the application of a 120-day administrative forbearance by the lender while investigating an alleged identity theft would be negligible given that so few loans are affected and the time-period under which these requirements are waived is so short.

Sections 682.603, 682.604, 685.301, and 685.304—Entrance Counseling for Graduate/Professional PLUS Borrowers

The proposed changes to §§ 682.603 and 685.301 would require institutions, as part of the process for certifying a FFEL Loan or originating a Direct Loan, to notify Graduate/Professional PLUS Loan student borrowers who are eligible for Stafford Loans of their eligibility for a Stafford Loan and of the terms and conditions of a Stafford Loan that are more beneficial to a borrower than the terms and conditions of a PLUS loan, and to give borrowers an opportunity to request a Stafford Loan at that time. The proposed changes in §§ 682.604 and 685.304 would also establish a separate entrance counseling requirement for Graduate/Professional PLUS student borrowers. We estimate that the proposed changes will increase burden on an annual basis by an additional 79,992 hours for individual borrowers and by 2,719 hours for institutions of higher education, which will be reflected in OMB Control Number 1845–0020.

Sections 682.401, 682.603, and 685.301—Maximum Length of a Loan Period

The proposed changes in §§ 682.401, 682.603, and 685.301 would eliminate the maximum 12-month loan period for annual loan limits in the FFEL and Direct Loan Programs and the 12-month period of loan guarantee in the FFEL program to allow institutions to certify a single loan for students in shorter non-

term or nonstandard term programs. The proposed changes would also provide greater flexibility in scheduling disbursements for students who drop out and return within the permitted 180-day period. The proposed changes affect schools and lenders.

The proposed changes represent a decrease in burden because schools and lenders will be able to certify and disburse one loan, as opposed to two loans, when programs are longer than 12 months. We estimate a decrease of burden on schools and lenders by 358,375 hours for each group for an annual total reduction of 716,750 hours. As a result of these proposed changes, the decrease in burden will be reflected in OMB Control Numbers 1845-0020 and 1845-0021.

Sections 674.45—Reasonable Collection Costs in the Perkins Loan Program

The proposed changes in § 674.45 would limit the collection costs an institution may assess against a Perkins Loan borrower to 30 percent of the total of the outstanding principal, interest, and late charges on the loan collected for first collection efforts, 40 percent for second and subsequent collection efforts, and 40 percent plus court costs for collection efforts resulting from litigation. The changes affect institutions that participate in the Perkins Loan Program and collection agencies.

The changes do not represent a change in burden. Collection practices and procedures would not change; only the amount assessed against a defaulted borrower would change. Therefore, there is no additional burden associated with this provision.

Sections 674.8 and 674.50—Mandatory Assignment of Defaulted Perkins Loans

The proposed changes to §§ 674.8 and 674.50 would provide the Department with the authority to require assignment of a Perkins Loan if the outstanding principal balance on the loan is \$100 or more, the loan has been in default for seven or more years, and a payment has not been received on the loan in the past 12 months. Institutions that participate in the Perkins Loan Program (and their servicers) would be affected by these changes.

The proposed change allowing the Department to require the assignment of certain defaulted Perkins Loans represents an increase in burden because institutions would be required to prepare and submit for assignment to the Department loans that might not otherwise have been assigned. We estimate that the proposed changes will increase burden on schools (and their

servicers) annually by a total of 95,393 hours. The increased burden associated with these proposed changes will be reflected in OMB Control Number 1845-0019.

Sections 682.200 and 682.602—Eligible Lender Trustee

The proposed changes implement the HEA Extension Act by amending the definition of *lender* to prohibit a FFEL lender from entering into an eligible lender trustee (ELT) relationship with a school or a school-affiliated organization as of September 30, 2006, but allowing current relationships to continue. The proposed changes also add a new definition of *school-affiliated organization*, and add a new § 682.602 to apply most of the same restrictions that are imposed on FFEL school lenders by the HERA to school and school-affiliated ELT arrangements as of January 1, 2007. The entities affected by these proposed changes are lenders, ELTs, schools and school-affiliated organizations.

The proposed changes impose limits and prohibit certain arrangements between schools and school-affiliated organizations and eligible lender trustees. The affected entities under the proposed regulations are schools and school-affiliated organizations. We estimate that burden will increase by 57,000 hours and 86,000 hours for schools and school-affiliated organizations, respectively, and we will include this burden in OMB control number 1845-0020.

Sections 682.212 and 682.603—Preferred Lender

The proposed regulations in § 682.212 would require that any school's list of recommended lenders contain at least three unaffiliated lenders to provide borrower choice. The Department expects a school to collect and retain a statement certifying to this fact, upon which the school can rely, from each of the lenders they propose to include on their list. The proposed regulations also require the disclosure of supporting information and data with the list as the most efficient and effective method to ensure that borrowers make informed consumer decisions. The provision of comparative interest rate and benefit information, in addition to describing the method and criteria used to select lenders for the list, will involve additional efforts for schools in preparing and providing a preferred lender list. We estimate that burden will increase by 141,625 hours for institutions of higher education. The increased burden associated with the proposed changes in § 682.212 will be

reflected under a new OMB Control Number upon publication of the NPRM.

To assist schools with this effort, the Department is developing a model format that a school may use to present this information. The Department will be sharing a draft of the model format with representatives of school, lending and guaranty agency communities as well as students and parents to solicit their thoughts and suggestions. The draft model format will then be revised and submitted for clearance to OMB as required by the Paperwork Reduction Act of 1995. This clearance process will afford additional opportunities for public comment on the draft model format. The Department is not requesting comments on this form at this point, but will publish a separate notice in the **Federal Register**, with a 60-day request for public comment, to do so and will submit the form for OMB approval when these proposed regulations are published in final form.

The proposed changes in § 682.603 provide that a school must certify Stafford and PLUS loans expeditiously regardless of the lender chosen by the borrower, that a school cannot assign a lender to a first-time borrower, and that a school may not engage in practices that deny a borrower access to FFEL loans based on the borrower's selection of a lender or guaranty agency. These proposed changes do not change the certification process or the data collection requirements associated with the certification process.

Sections 682.200, 682.209, 682.401, and 682.406—Prohibited Inducements

The proposed changes to §§ 682.200 and 682.401 provide lists of prohibited activities in which lenders and guaranty agencies may not engage to secure loan applications or loan volume in the FFEL Program. The proposed regulations would also include lists of permissible activities in which lenders and guaranty agencies may engage as part of their roles as administrators of the FFEL program. The entities affected by these changes are lenders and guaranty agencies. The inclusion of a detailed list of prohibited and permissible activities in §§ 682.200 and 682.401 largely codifies long-standing Department guidance and does not represent an increase in burden.

The proposed changes in § 682.209 would allow a borrower to assert any defense available under applicable State law against repayment of the loan if the lender making the loan offered or provided an improper inducement to the borrower's school. The entities affected by the proposed changes are borrowers, institutions, lenders, and

guaranty agencies. The proposed change does not represent a change in burden. This borrower defense against repayment is currently available to borrowers of FFEL Loans who attend a proprietary school. The proposed change extending this entitlement to FFEL Loan borrowers who attend other types of schools is a codification of the rights extended to such borrowers under State laws. Therefore, there is no burden associated with this change.

The proposed changes in § 682.406 provide that a guaranty agency may not make a claim payment on a loan if the lender offered or provided an improper inducement to the school, a borrower, or any other individual or entity. The entities affected by the proposed changes are lenders and guaranty agencies. The proposed change does not represent a change in burden. The forms and procedures associated with the

claim filing process would remain unchanged.

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

Regulatory section	Information collection	Collection
§§ 674.38, 682.210 and 685.204.	This proposed regulation allows a loan holder to grant deferments based upon information from another holder, rather than requiring the borrower to resubmit deferment documentation to each holder separately.	OMB 1845-0019, 1845-0020 and 1845-0021.
§§ 674.61, 682.402 and 685.212.	Allows for the use of an accurate and complete copy of the original or certified copy of a borrower's original or certified copy of the death certificate to support the discharge of a Title IV loan.	OMB 1845-0019, 1845-0020 and 1845-0021.
§§ 674.61, 682.402 and 685.213.	A revised Total and Permanent Disability Discharge Form will be submitted to OMB for review by January 31, 2008 for review and approval prior to the effective date of July 1, 2008.	OMB 1845-0065.
§§ 674.19, 674.50, and 682.414.	Requires that schools, lenders and guarantors create, maintain, and provide an affidavit or certification, upon request, regarding the creation and maintenance of electronic MPNs or promissory notes, including the authentication and signature process.	OMB 1845-0019 and 1845-0020.
§§ 674.19 and 674.50	Requires Perkins loan participating schools to retain MPNs until all the loans on the MPN are satisfied.	OMB 1845-0019.
§§ 682.603, 682.604, 685.301 and 685.304.	Requires Entrance Counseling for all Grad PLUS loans	OMB 1845-0020 and 1845-0021
§§ 682.401, 682.603 and 685.301.	Eliminates the maximum loan timeframe of 12 months.	OMB 1845-0020 and 1845-0021.
§§ 674.8 and 674.50	Requires the mandatory assignment of Perkins loans when the outstanding principal balance on the loan is \$100 or more, the loan has been in default 7 or more years, and a payment has not been received in the past 12 months.	OMB 1845-0019.
§§ 682.200 and 682.602	Imposes the same rules for FFEL school lenders by HERA to school and school-affiliated organization arrangements.	OMB 1845-0020.
682.212	Requires institutions that use a preferred lenders list to provide information on the method and criteria used to select the lenders on the list.	OMB 1845-XXXX This will be a new collection. A separate 60-day Federal Register notice will be published to solicit comment on this form once it is developed.

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

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including

whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these

proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

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

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or

authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance 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 674, 682 and 685

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

Dated: May 31, 2007.

Margaret Spellings,

Secretary of Education.

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

2. Section 674.8 is amended by:

A. In paragraph (d)(1), removing the words “; or” and adding in their place the punctuation “.”.

B. Adding a new paragraph (d)(3).

The addition reads as follows:

§ 674.8 Program participation agreement.

* * * * *

(d) * * *

(3) The institution shall, at the request of the Secretary, assign its rights to a loan to the United States without recompense if—

(i) The amount of outstanding principal is \$100.00 or more;

(ii) The loan has been in default, as defined in § 674.5(c)(1), for seven or more years; and

(iii) A payment has not been received on the loan in the preceding twelve months, unless payments were not due because the loan was in a period of authorized forbearance or deferment.

* * * * *

3. Section 674.16 is amended by adding new paragraph (j) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(j) The institution must report enrollment and loan status information, or any Title IV loan-related information required by the Secretary, to the Secretary by the deadline date established by the Secretary.

* * * * *

4. Section 674.19 is amended by:

A. Redesignating paragraphs (e)(2)(i) and (ii) as paragraphs (e)(2)(iii) and (iv).

B. Adding new paragraphs (e)(2)(i) and (ii).

C. Revising paragraph (e)(3).

D. In paragraph (e)(4)(i), removing the words “Master Promissory Note (MPN)” and adding, in their place, the word “MPN”.

E. Revising paragraph (e)(4)(ii).

The addition and revisions read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) * * *

(i) An institution shall retain a record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN). This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification regarding the creation and maintenance of the institution’s electronic MPN or promissory note, including the institution’s authentication and signature process in accordance with the requirements of § 674.50(c)(12).

* * * * *

(3) *Period of retention of disbursement records, electronic authentication and signature records, and repayment records.* (i) An institution shall retain disbursement and electronic authentication and signature records for each loan made

using an MPN for at least three years from the date the loan is canceled, repaid, or otherwise satisfied.

(ii) An institution shall retain repayment records, including cancellation and deferment requests for at least three years from the date on which a loan is assigned to the Secretary, canceled or repaid.

(4) * * *

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. An original electronically signed MPN must be retained by the institution for 3 years after all the loans made on the MPN are satisfied.

* * * * *

5. Section 674.38 is amended by:

A. In paragraph (a)(1), removing the words “(a)(2)” and adding, in their place, the words “(a)(5)”.

B. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(5) and (a)(7), respectively.

C. Adding new paragraphs (a)(2), (a)(3), (a)(4), and (a)(6).

The additions read as follows:

§ 674.38 Deferment procedures.

(a) * * *

(2) After receiving a borrower’s written or verbal request, an institution may grant a deferment under §§ 674.34(b)(1)(ii), 674.34(b)(1)(iii), 674.34(b)(1)(iv), 674.34(d), 674.34(e), and 674.34(h) if the institution is able to confirm that the borrower has received a deferment on another Perkins Loan, a FFEL Loan, or a Direct Loan for the same reason and the same time period. The institution may grant the deferment based on information from the other Perkins Loan holder, the FFEL Loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(3) An institution may rely in good faith on the information it receives under paragraph (a)(2) of this section when determining a borrower’s eligibility for a deferment unless the institution, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. An institution must resolve any discrepant information before granting a deferment under paragraph (a)(2) of this section.

(4) An institution that grants a deferment under paragraph (a)(2) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to cancel

the deferment and continue to make payments on the loan.

* * * * *

(6) In the case of a military service deferment under §§ 674.34(h) and 674.35(c)(1), a borrower's representative may request the deferment on behalf of the borrower. An institution that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The institution may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

6. Section 674.45 is amended by:

A. Redesignating paragraph (e)(3) as paragraph (e)(4).

B. Adding new paragraph (e)(3). The addition reads as follows:

§ 674.45 Collection procedures.

* * * * *

(e) * * *

(3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—

(i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;

(ii) For second and subsequent collection efforts, 40 percent of the amount of principal, interest, and late charges collected; and

(iii) For collection efforts resulting from litigation, 40 percent of the amount of principal, interest, and late charges collected plus court costs.

* * * * *

7. Section 674.50 is amended by:

A. Adding new paragraphs (c)(11) and (12).

B. In paragraph (e)(1), adding the words “, unless the loan is submitted for assignment under paragraph 674.8(d)(3) of this section” immediately after the word “borrower”.

The additions read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) * * *

(11) A record of disbursements for each loan made to a borrower on an MPN that shows the date and amount of each disbursement.

(12)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the institution that created the original electronically signed promissory note must cooperate with

the Secretary in all activities necessary to enforce the loan or loans. Such institution must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the institution, if necessary, to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The certification in paragraph (c)(12)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flowchart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when that borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the institution's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary, including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The institution must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under an MPN created by an institution is not satisfied, the institution is responsible for ensuring that all parties entitled to access have full and complete access to the electronic loan record.

* * * * *

8. Section 674.56 is amended by revising paragraph (b)(1) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins loan, NDSL, and Defense loan.

* * * * *

(b) * * *

(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing services directly and exclusively to high-risk children who are from low-income communities and the families of these children, or who is supervising the provision of services to high-risk children who are from low-income communities and the families of these children. To qualify for a child or family service cancellation, a non-supervisory employee of a child or family service agency must be providing services only to high-risk children from low-income communities and the families of these children. The employee must work directly with the high-risk children from low-income communities, and the services provided to the children's families must be secondary to the services provided to the children.

* * * * *

9. Section 674.61 is amended by:

A. Revising the second sentence in paragraph (a).

B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

(a) * * * The institution must discharge the loan on the basis of an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. * * *

(b) *Total and permanent disability—*
(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(s), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability, a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan. 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(s). The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(ii) 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, the institution must suspend collection activities and assign the loan to the Secretary.

(iii) At the time the loan is assigned to the Secretary, the institution must notify the borrower that—

(A) 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; and

(B) In order to remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial eligibility determination—

(1) The borrower cannot work and earn money or receive any new title IV loans; and

(2) The borrower must, on any loan received prior to the date the physician completed and certified the application, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(3) *Secretary's initial eligibility determination.* (i) The borrower must continue to meet the conditions in paragraph (b)(2)(iii)(B) of this section from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (b)(3)(ii) of this section.

(ii) If 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, the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(iii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in § 674.51(s), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years, beginning

on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled. The notification to the borrower identifies the conditions of the conditional discharge period specified in paragraph (b)(4)(i) of this section.

(iv) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(4) *Eligibility requirements for a total and permanent disability discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures, on any loan received prior to the date the physician completed and certified the application, that the full amount of any title IV loan disbursement made on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

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

(D) Must 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

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(iii) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (b)(3) of this section through the end of the conditional discharge period.

(5) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician completes and 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 while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

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

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

(d) *Retroactive.* Discharge for death applies retroactively to all Defense, NDSL, and Perkins loans.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

11. Section 682.200(b) is amended by:

A. Amending the definition of *Lender* by revising paragraph (5) and adding paragraph (7).

B. Adding a definition of *School-affiliated organization*.

The revisions and additions read as follows:

§ 682.200 Definitions.

(b) * * *

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, or other inducements to any school or other party to secure applications for FFEL loans or to secure 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 in exchange for applying for or accepting a FFEL loan from the lender;

(2) Payments or other benefits to a school, any school-affiliated organization or to any individual in exchange for FFEL loan applications, or 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;

(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 of referral or processing fees to another lender or any other party;

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

(7) 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;

(8) Undertaking 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; and

(9) Staffing services to a school as a third-party servicer or otherwise on more than a short-term, emergency basis, and which is non-recurring, to

assist a school with financial aid-related functions.

(B) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent 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) Assistance to a school that is comparable to the kinds of 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, 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; and

(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.

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

(A) The term "school-affiliated organization" is defined in section 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, computer hardware 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.

* * * * *

(7) An eligible lender may not make or hold a loan as trustee for a school, or for a school-affiliated organization as defined in this section, unless on or before September 30, 2006—

(i) The eligible lender was serving as trustee for the school or school-affiliated organization under a contract entered into and continuing in effect as of that date; and

(ii) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(8) Effective January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization, must comply with the requirements of § 682.601(a)(3), (a)(5), and (a)(7). * * *

School-affiliated organization. A school-affiliated organization is any organization that is directly or indirectly related to a school and includes, but is not limited to, alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

* * * * *

12. Section 682.202 is amended by:

A. In paragraph (b)(2) introductory text, adding the words, "and (b)(5)" immediately after the words "(b)(4)".

B. Redesignating paragraph (b)(5) as paragraph (b)(6).

C. Adding a new paragraph (b)(5). The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(b) * * *

(5) For Consolidation loans, the lender may capitalize interest as provided in paragraphs (b)(2) and (b)(3) of this section, except that the lender may capitalize the unpaid interest for a period of authorized in-school deferment only at the expiration of the deferment.

* * * * *

13. Section 682.208 is amended by:

A. Revising paragraph (a).

B. Adding new paragraphs (b)(3) and (b)(4).

C. Adding a new paragraph (i).

The revisions and addition read as follows:

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

* * * * *

(b) * * *

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), an eligible lender shall suspend credit bureau reporting for a period not to exceed 120 days while the lender determines the enforceability of a loan.

(i) If the lender determines that a loan does not qualify for a discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must—

(A) Notify the credit bureau of its determination; and

(B) Comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(ii) [Reserved]

(4) If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the borrower evidence specified in § 682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

* * * * *

(i) A lender shall report enrollment and loan status information, or any Title IV loan-related data required by the Secretary, to the guaranty agency or to the Secretary, as applicable, by the deadline date established by the Secretary.

* * * * *

14. Section 682.209 is amended by adding new paragraph (k) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(k) Any lender holding a loan is subject to all claims and defenses that the borrower could assert against the school with respect to that loan if—

(1) The loan was made by the school or a school-affiliated organization;

(2) The lender who made the loan provided an improper inducement, as defined in paragraph (5)(i) of the definition of *Lender* in § 682.200(b), to the school or any other party in connection with the making of the loan;

(3) The school refers borrowers to the lender; or

(4) The school is affiliated with the lender by common control, contract, or business arrangement.

* * * * *

15. Section 682.210 is amended by:

A. In paragraph (i)(1), adding the words, "or a borrower's representative" immediately following the words "a borrower".

B. Adding new paragraph (i)(5).

C. In paragraph (s)(1), by redesignating the text following the heading as paragraph designation (s)(1)(i).

D. Adding new paragraphs (s)(1)(ii), (s)(1)(iii), (s)(1)(iv), (s)(1)(v), (t)(7), and (t)(8).

The additions read as follows:

§ 682.210 Deferment.

* * * * *

(i) * * *

(5) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

(s) * * *

(1) * * *

(ii) As a condition for receiving a deferment, except for purposes of paragraph (s)(2) of this section, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment.

(iii) After receiving a borrower's written or verbal request, a lender may grant a deferment under paragraphs (s)(3) through (s)(6) of this section if the lender is able to confirm that the borrower has received a deferment on another FFEL loan or on a Direct Loan for the same reason and the same time period. The lender may grant the deferment based on information from

the other FFEL loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(iv) A lender may rely in good faith on the information it receives under paragraph (s)(1)(iii) of this section when determining a borrower's eligibility for a deferment unless the lender, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. A lender must resolve any discrepant information before granting a deferment under paragraph (s)(1)(iii) of this section.

(v) A lender that grants a deferment under paragraph (s)(1)(iii) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL loan or to cancel the deferment and continue to make payments on the loan.

* * * * *

(t) * * *

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(8) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

16. Section 682.211 is amended by:

A. Redesignating paragraphs (f)(6), (f)(7), (f)(8), (f)(9), (f)(10), (f)(11) as paragraphs (f)(7), (f)(8), (f)(9), (f)(10), (f)(11), and (f)(12), respectively.

B. Adding new paragraph (f)(6).

The addition reads as follows:

§ 682.211 Forbearance.

* * * * *

(f)(1) * * *

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an

alleged identity theft as defined in § 682.402(e)(14), for a period not to exceed 120 days necessary for the lender to determine the enforceability of a loan. If the lender determines that the loan does not qualify for discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

- 17. Section 682.212 is amended by:
 - A. In paragraph (c) introductory text, removing the words “the Student Loan Marketing Association,”.
 - B. In paragraph (d), removing the words “the Student Loan Marketing Association or”.
 - C. Adding new paragraph (h).
The addition reads as follows:

§ 682.212 Prohibited transactions.

(h)(1) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school’s students or their parents, provided such list—

- (i) Is not used to deny or otherwise impede a borrower’s choice of lender;
- (ii) Does not contain fewer than three lenders that are not affiliated with each other and that will make loans to borrowers or students attending the school; and
- (iii) Does not include lenders that have offered, or have been solicited by the school to offer, financial or other benefits to the school in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

(2) A school that provides or makes available a list of recommended or suggested lenders must—

- (i) Disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends or suggests;
- (ii) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders;
- (iii) Ensure that any benefits offered to borrowers by the lenders are the same for all borrowers at the school;
- (iv) Include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school’s recommended or suggested lenders;

(v) For first-time borrowers, not assign, through award packaging or other methods, a borrower’s loan to a particular lender; and

(vi) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school.

(3) For the purposes of paragraph (h) of this section, a lender is affiliated with another lender if—

- (i) The lenders are under the ownership or control of the same entity or individuals;
- (ii) The lenders are wholly or partly owned subsidiaries of the same parent company;
- (iii) The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender; or
- (iv) One of the lenders is making loans on its own behalf and is also holding loans as a trustee lender for another entity.

18. Section 682.300 is amended by:

- A. In paragraph (b)(2)(vii), removing the word “or” at the end of the paragraph.
- B. In paragraph (b)(2)(viii), removing the punctuation “.” at the end of the paragraph and adding, in its place, “; or”.
- C. Adding new paragraph (b)(2)(ix).
The addition reads as follows:

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

- (b) * * *
- (2) * * *
- (ix) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

19. Section 682.302 is amended by—

- A. In paragraph (d)(1)(vi)(B), removing the word “or” at the end of the paragraph.
- B. In paragraph (d)(1)(vii), by removing the punctuation “.” and adding, in its place, “; or”.
- C. Adding new paragraph (d)(1)(viii).
The addition reads as follows:

§ 682.302 Payment of special allowance on FFEL loans.

- (d) * * *
- (1) * * *
- (viii) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

20. Section 682.401 is amended by:

A. In paragraph (b)(2)(ii)(A), removing the punctuation “;” at the end of the paragraph and adding, in its place, the words “, as defined in 34 CFR 668.3; or”.

- B. Revising paragraph (b)(2)(ii)(B).
- C. Removing paragraph (b)(2)(ii)(C).
- D. In paragraph (b)(20) introductory text, removing the number “60” and adding, in its place, the number “30”.
- E. Revising paragraph (e).
The revisions read as follows:

§ 682.401 Basic program agreement.

- (b) * * *
- (2) * * *
- (ii) * * *
- (B) A period attributable to the academic year that is not less than the period specified in paragraph (b)(2)(ii)(A) of this section, in which the student earns the amount of credit in the student’s program of study required by the student’s school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(e) *Prohibited activities.* (1) A guaranty agency may not, directly or through an agent or contractor—

- (i) Except as provided in paragraph (e)(2) of this section, offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, or other inducement to any prospective borrower of a FFEL loan, or to a school or school-affiliated organization or an employee of a school or school-affiliated organization, to secure applications for FFEL loans. This includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for processing a loan using the agency’s loan guarantee;

(B) Payments or other benefits, including prizes or additional financial aid funds under any title IV or State or private program, to a school or school-affiliated organization based on the school’s or organization’s voluntary or coerced agreement to use the guaranty agency for processing loans, or a specified volume of loans, using the agency’s loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans, or the

placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders;

(D) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for school employees or employees of school-affiliated organizations;

(E) Undertaking philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders; and

(F) Staffing services to a school as a third-party sevicer or otherwise on more than a short-term, emergency basis, which is non-recurring, to assist the institution with financial aid-related functions.

(ii) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participate in the agency's program, or to provide a specified volume of loan applications or loan volume to the agency's program or to place a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(iii) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; and

(D) Offering to pay a lender that does not hold loans guaranteed by the agency a fee for each application forwarded for the agency's guarantee.

(iv) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency.

(v) Conduct fraudulent or misleading advertising concerning loan availability.

(2) Notwithstanding paragraphs (e)(1)(i), (ii), and (iii) of this section, a guaranty agency is not prohibited from providing—

(i) Assistance to a school that is comparable to that provided by the Secretary to a school under the Direct Loan Program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(ii) Default aversion activities approved by the Secretary under section 422(h)(4)(B) of the Act;

(iii) Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

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

(v) Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or 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;

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

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

(viii) 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.

(3) For the purposes of this section—

(i) The term "school-affiliated organization" is defined in § 682.200.

(ii) The term "applications" includes the FAFSA, FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(iii) The terms "other benefits" includes, but is not limited to, preferential rates for or access to a guaranty agency's products and services, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and the printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or not costs.

(iv) The terms *premium*, *incentive payment*, and *other inducement* do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms *premium*, *incentive payment*, and *inducement* do apply to other activities specifically intended to secure a lender's participation in the agency's program.

* * * * *

21. Section 682.402 is amended by:
A. Revising the first sentence in paragraph (b)(2).

B. Revising the third sentence in paragraph (b)(3).

C. Revising paragraph (c).

D. In paragraph (e)(2)(iv), adding the words "or inaccurate" immediately after the word "adverse".

The revisions read as follows:

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

* * * * *

(b) * * *

(2) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. * * *

(3) * * * If the lender is not able to obtain an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. * * *

(c)(1) *Total and permanent disability.* A borrower's loan is discharged if the

borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* 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, on a form approved by the Secretary, 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 § 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 in paragraph (c)(5) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's initial eligibility determination.* (i) During the period from the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c)(3)(ii) of this section—

(A) The borrower cannot work and earn money or receive any new title IV loans; and

(B) The borrower must, on any loan received prior to the date the physician completed and certified the application, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(ii) If 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 defined in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(iii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in § 682.200(b), the Secretary suspends collection activity and notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years. This notification identifies the conditions of the conditional discharge specified in paragraph (c)(4)(i) of this section. The

conditional discharge period begins on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled, as defined in § 682.200(b).

(iv) If the Secretary determines that the certification and information provided by the borrower do not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge in paragraph (c)(4)(i) of this section, 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.

(4) *Eligibility requirements for total and permanent disability discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on total and permanent disability if, during and at the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures, on any loan received prior to the date the physician completed and certified the application, that the full amount of any title IV loan disbursement made on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered delinquent or in default on the loan, unless the borrower was delinquent or in default at the time the conditional discharge was granted;

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

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(4)(i)(A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(iii) If the borrower satisfies the criteria for a total and permanent

disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the physician completed and certified the borrower's loan discharge application are returned.

(iv) If, at any time during the three-year conditional discharge period, the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (c)(3)(ii) of this section through the end of the conditional discharge period.

(5) *Lender and guaranty agency responsibilities.* (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 defined in § 682.200(b). Except as provided in paragraph (c)(5)(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 meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, as defined 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)(3) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance

with § 682.202(b), any interest accrued and not paid during that period.

(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 meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(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) To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial eligibility determination, the borrower—

(1) Cannot work and earn money or receive any new title IV loans; and

(2) Must ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder 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.

* * * * *

22. Section 682.406 is amended by adding new paragraph (d) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

* * * * *

(d) A guaranty agency may not make a claim payment from the Federal Fund or receive a reinsurance payment on a loan if the lender offered or provided an improper inducement as defined in paragraph (5)(i) of the definition of lender in § 682.200(b).

23. Section 682.409 is amended by adding new paragraphs (c)(4)(vii) and (viii).

The additions read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(4) * * *

(vii) The record of the lender's disbursement of Stafford and PLUS loan funds to the school for delivery to the borrower.

(viii) If the MPN or promissory note was signed electronically, the name and location of the entity in possession of the original electronic MPN or promissory note.

* * * * *

24. Section 682.411 is amended by revising paragraph (o) as follows:

§ 682.411 Lender due diligence in collecting guaranty agency loans.

* * * * *

(o) *Preemption.* The provisions of this section—

(1) Preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section; and

(2) Do not preempt provisions of the Fair Credit Reporting Act that provide relief to a borrower while the lender determines the legal enforceability of a loan when the lender receives a valid identity theft report or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in § 682.402(e)(14).

* * * * *

25. Section 682.413 is amended by:

A. Adding new paragraph (h).

B. In the Note at the end of the section, removing the word "Note" and adding, in its place, the words "Note to Section 682.413".

The addition reads as follows:

§ 682.413 Remedial actions.

* * * * *

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of § 682.401(e), if the Secretary finds that the guaranty agency provided or offered the payments or activities listed in § 682.401(e)(1), the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

26. Section 682.414 is amended by:

A. Adding new paragraph (a)(5)(iv).

B. Adding new paragraph (a)(6).

C. Revising paragraph (b)(4).

The additions and revisions read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(5) * * *

(iv) If a lender made a loan based on an electronically signed MPN, the holder of the original electronically signed MPN must retain that original MPN for at least 3 years after all the loans made on the MPN have been satisfied.

(6)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the guaranty agency and the lender that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. The guaranty agency or lender must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the guaranty agency or lender, if necessary to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The certification described in paragraph (a)(6)(i) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flow chart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the lender's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The guaranty agency must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by the lender is not satisfied, the holder of the original electronically signed promissory note is responsible for ensuring that all parties entitled to access to the electronic loan record, including the guaranty agency and the Secretary, have full and complete access to the electronic loan record.

(b) * * *

(4) A report to the Secretary of the borrower's enrollment and loan status information, or any Title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

* * * * *

27. Section 682.602 is added to read as follows:

§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.

(a) A school or school-affiliated organization may not contract with an

eligible lender to serve as trustee for the school or school-affiliated organization unless—

(1) The school or school-affiliated organization originated and continues or renews a contract made on or before September 30, 2006 with the eligible lender; and

(2) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on September 30, 2006.

(b) Effective January 1, 2007, and for loans first disbursed on or after that date under a lender trustee arrangement that continues in effect after September 30, 2006—

(1) A school in a trustee arrangement or affiliated with an organization involved in a trustee arrangement to originate loans must comply with the requirements of § 682.601(a), except for paragraphs (a)(3), (a)(4), (a)(7), and (a)(9) of that section; and

(2) A school-affiliated organization involved in a trustee arrangement to make loans must comply with the requirements of § 682.601(a)(5) and (a)(8).

(Authority: 20 U.S.C. 1082, 1085)

28. Section 682.603 is amended by:

A. In paragraph (a), at the end of the last sentence, removing the words "on the application by the student" and adding, in their place, the words "by the borrower and, in the case of a parent borrower of a PLUS loan, the student and the parent borrower".

B. In paragraph (b) introductory text, removing the words "making application for the loan".

C. In paragraph (c), removing the reference "paragraph (e) of this section" and adding in its place, the reference "paragraph (f) of this section".

D. Redesignating paragraphs (d), (e), (f), (g), (h), and (i) as paragraphs (e), (f), (g), (h), (i), and (j), respectively.

E. Adding a new paragraph (d).

F. In the introductory language in newly redesignated paragraph (e), removing the words " application, or combination of loan applications," and adding, in their place, the words " , or a combination of loans,".

G. In newly redesignated paragraph (e)(2) introductory text, adding the words "for the period of enrollment" after the word "attendance".

H. In newly redesignated paragraph (e)(2)(ii), adding the word "Subsidized" immediately before the word "Stafford" and removing the words "that is eligible for interest benefits" immediately after the word "loan".

I. Revising newly redesignated paragraph (f).

J. In newly redesignated paragraph (g)(2)(i), removing the words " , not to exceed 12 months,".

The addition and revision read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(d) Before certifying a PLUS loan application for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which the borrower is eligible, the school must—

(1) Notify the graduate or professional student borrower of the maximum Stafford loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment; and

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

* * * * *

(f) In certifying loans, a school—

(1) May not refuse to certify, or delay certification, of a Stafford or PLUS loan based on the borrower's selection of a particular lender or guaranty agency;

(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender;

(3) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided that—

(i) The determination is made on a case-by-case basis; and

(ii) The documentation supporting the determination is retained in the student's file; and

(4) May not, under paragraph (f)(1), (2), and (3) of this section, engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or

selection of a particular lender or guaranty agency.

* * * * *

29. Section 682.604 is amended by:

A. Revising paragraph (f)(1).

B. Redesignating paragraphs (f)(2), (f)(3), and (f)(4) as paragraphs (f)(5), (f)(6), and (f)(7), respectively.

C. Adding new paragraphs (f)(2), (f)(3), and (f)(4).

D. Revising newly redesignated paragraph (f)(5) introductory text.

E. In newly redesignated paragraph (f)(5)(iv), removing the words, "of a Stafford loan".

F. In newly redesignated paragraph (f)(5)(v), adding the words "or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained," immediately after the words "Stafford loan borrowers".

G. In paragraph (g)(2)(i), removing the words "Stafford or SLS loans" and adding, in their place, "Stafford loans, or student borrowers who have obtained Stafford and PLUS loans, depending on the types of loans the student borrower has obtained,".

The revision and additions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(f) *Initial counseling.* (1) A school must ensure that initial counseling is conducted with each Stafford Loan borrower prior to its release of the first disbursement unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan.

(2) A school must ensure that initial counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan. The initial counseling must—

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (d)(1)(i) through (d)(1)(iii) of this section; and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(5)(i) through (f)(5)(iv) of this section.

(3) Initial counseling must be conducted either in person, by audiovisual presentation, or by interactive electronic means.

(4) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

(5) Initial counseling for Stafford Loan borrowers must—

* * * * *

30. Section 682.705 is amended by adding new paragraph (c) to read as follows:

§ 682.705 Suspension proceedings.

* * * * *

(c) In any action to suspend a lender based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or hearing official finds that the lender provided or offered the payments or activities listed in paragraph (5)(i) of the definition of *lender* in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

31. Section 682.706 is amended by adding new paragraph (d) to read as follows:

§ 682.706 Limitation or termination proceedings.

* * * * *

(d) In any action to limit or terminate a lender's eligibility based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official or hearing official finds that the lender provided or offered the payments or activities listed in paragraph (5)(i) of the definition of *Lender* in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the

payments or activities were offered or provided to secure applications for FFEL loans. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

33. Section 685.204 is amended by:

A. In paragraph (b)(1)(iii)(A) introductory text, removing the words "(b)(1)(i)" and adding, in their place, the words "(b)(1)(i)(A)".

B. In paragraph (d)(1), removing the word "the" and adding, in its place, the word "The".

C. In paragraph (d)(2), removing the word "the" and adding, in its place, the word "The".

D. Adding new paragraph (g).
The addition reads as follows:

§ 685.204 Deferments.

* * * * *

(g)(1) To receive a deferment, except as provided under paragraph (b)(1)(i)(A) of this section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment granted under paragraph (e)(1) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower's written or verbal request, the Secretary may grant a deferment under paragraphs (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i), and (e)(1) of this section if the Secretary confirms that the borrower has received a deferment on a Perkins or FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph (g)(2) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant information before granting a deferment under paragraph (g)(2) of this section.

(4) If the Secretary grants a deferment under paragraph (g)(2) of this section, the Secretary notifies the borrower that

the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(5) If the Secretary grants a military service deferment based on a request from a borrower's representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

34. Section 685.212 is amended by revising paragraph (a)(1) and (2) to read as follows:

§ 685.212 Discharge of a loan obligation.

(a) * * * (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on an original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate, or an accurate and complete photocopy of the original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate.

(2) If an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate is not available, the Secretary discharges the loan only if other reliable documentation establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

* * * * *

35. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability.

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

(b) *Discharge application process.* (1) To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit to the Secretary 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 § 682.200(b). The certification must be on a form approved by the Secretary. The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application.

(2) Upon receipt of the borrower's application, the Secretary notifies the borrower that—

(i) No payments are due on the loan; and

(ii) The borrower, in order to remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial eligibility determination—

(A) Cannot work and earn money or receive any new title IV loans; and

(B) Must, on any loan received prior to the date the physician completed and certified the application, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(c) *Initial determination of eligibility.*

(1) The borrower must continue to meet the conditions in paragraph (b)(2)(ii) of this section from the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c)(2) of this section.

(2) 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, the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(3) The Secretary suspends collection activity and notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years upon making an initial determination that the borrower is totally and permanently disabled, as defined in § 682.200(b). This notification identifies the conditions of the conditional discharge period specified in paragraph (d)(1) of this section. The conditional discharge period begins on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled.

(4) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(d) *Eligibility requirements for total and permanent disability.* (1) A borrower meets the eligibility requirements for a total and permanent disability discharge if, during and at the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures, on any loan received prior to the date the physician completed and certified the application, that the full amount of any title IV loan disbursement made on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(2) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

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

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (d)(1)(A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(3) If the borrower continues to meet the eligibility requirements for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any

further payments on the loan at the end of that period; and

(ii) Returns any payments received after the date the physician completed and certified the borrower's loan discharge application.

(4) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial determination described in paragraph (c)(2) of this section through the end of the conditional discharge period.

* * * * *

36. Section 685.301 is amended by:

A. In paragraph (a)(1), removing the words "in the application by the student" and adding, in their place, the words, "by the borrower and, in the case of a parent PLUS loan borrower, the student and the parent borrower."

B. Redesignating paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) as (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10), respectively.

C. Adding new paragraph (a)(3).

D. Revising newly redesignated paragraph (a)(10)(ii)(A).

The addition and revisions read as follows:

§ 685.301 Determining eligibility and loan amount.

(a) * * *

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must—

(i) Notify the graduate or professional student borrower of the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct

Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment; and

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

* * * * *

(10) * * *

(ii) * * *

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

* * * * *

37. Section 685.304 is amended by:

A. In paragraph (a)(1) removing the words "(a)(4)" and adding, in their place, the words "(a)(5)".

B. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively.

C. Adding a new paragraph (a)(2).

D. Revising newly redesignated paragraph (a)(4) introductory text.

E. In newly redesignated paragraph (a)(4)(iv) removing the words "Direct Unsubsidized Loan borrowers" and adding, in their place, the words "Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained,".

F. In newly redesignated paragraph (a)(5) introductory text, removing the words "(a)(1)–(3)" and adding, in their place, the words "(a)(1) through (4)".

G. In newly redesignated paragraph (a)(5)(i), removing the words "(a)(1)" and adding, in their place, the words "(a)(1) or (a)(2)", and removing the words "(a)(3)" and adding in their place the words "(a)(4)".

H. In paragraph (b)(4)(i), removing the words "Direct Subsidized Loan and Direct Unsubsidized Loan borrowers" and adding, in their place, the words "student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance".

The addition reads as follows:

§ 685.304 Counseling borrowers.

(a) * * *

(2) Except as provided in paragraph (a)(5) of this section, a school must ensure that initial counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan. The initial counseling must—

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels or indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in paragraph (a)(3)(i) of this section; and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(4)(i) through (a)(4)(iv) of this section.

* * * * *

(4) Initial counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must—

* * * * *

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