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34 CFR Part 685
William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

[Docket ID ED–2014–OPE–0082]

RIN 1840–AD17

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 regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. The Secretary is proposing to amend these regulations to strengthen and improve the administration of the Federal Direct PLUS Loan Program authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: We must receive your comments on or before September 8, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006–8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Pamela Moran at (202) 502–7551 or (202) 502–7732 or by email at: *Brian.Smith@ed.gov* or *Pamela.Moran@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: These proposed regulations would update the standard for determining if a potential parent or student borrower has an adverse credit history for purposes of eligibility for a Direct PLUS Loan (PLUS loan). Specifically, the proposed regulations would amend the definition of ''adverse credit history'' and require PLUS loan counseling for a parent or student with an adverse credit history who is approved for a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist. The current regulations governing adverse credit history determinations have not been updated since the Direct Loan Program was established in 1994. The proposed regulations would amend the current regulations to reflect programmatic and economic changes that have occurred since 1994.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Revise the student PLUS loan borrower eligibility criteria to state more clearly that the PLUS loan adverse credit history requirements apply to student as well as parent PLUS loan borrowers.
- Add definitions of the terms ''charged off'' and ''in collection'' for purposes of determining whether an applicant for a PLUS loan has an adverse credit history.
- Specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.
- Provide that the combined outstanding balance threshold of $2,085 may be adjusted over time on a basis determined by the Secretary.
- Revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstances exist for a PLUS loan applicant who is determined to have an adverse credit history.
- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the Secretary's satisfaction that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary before receiving the PLUS loan.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis* section of this document, the proposed regulations would affect applicants for parent and student PLUS loans by modifying the standard for a determination of an adverse credit history. In particular, a student or parent would be considered to have an adverse credit history if the student or parent has one or more debts with a combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

The proposed regulations would also require that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the satisfaction of the Secretary that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary prior to receiving the loan.

Certain operational changes made by the Department in November 2011 resulted in an increase in the number of PLUS loan applicants who were determined to have an adverse credit history, potentially limiting the financial options and resources available to those applicants. The modifications made in the proposed regulations will increase the number of PLUS loan applicants who pass the adverse credit history check and will not have to request reconsideration of an initial denial under the Department's process for determining whether extenuating circumstances for the adverse credit history condition exist.

We estimate an increase of approximately 370,000 PLUS loan applicants who will pass the adverse credit history check under the proposed regulations.

Under the proposed regulations, applicants would not need to apply for reconsideration of an initial PLUS loan denial due to an adverse credit history, saving them time and effort. Additionally, because the proposed regulations strike a balance between increased availability of PLUS loan funds to improve student access to postsecondary education and helping to limit overborrowing through improved financial literacy, we believe that there will be benefits for both borrowers and the Department.

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 provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See the **ADDRESSES** section of this document for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Section 428B(a)(1)(A) of the HEA provides that to be eligible to receive a Federal PLUS Loan under the Federal Family Education Loan (FFEL) Program, the applicant must not have an adverse credit history, as determined pursuant to regulations promulgated by the Secretary. This same eligibility requirement applies to applicants for PLUS loans under the Direct Loan Program. *See* section 455(a)(1) of the HEA. The definition of ''adverse credit history'' in the current Direct Loan Program regulations is effectively the same as the regulatory definition of ''adverse credit history'' in the FFEL Program. The Department conducts a credit check on each applicant for a PLUS loan under the Direct Loan Program to determine whether he or she has an adverse credit history.

Section 685.200(b) and (c) of the Direct Loan Program regulations specifies that graduate and professional students, and parents borrowing on behalf of their dependent children, may borrow PLUS loans if they meet applicable eligibility requirements and do not have an adverse credit history. The regulations that specify what is considered to be an adverse credit history have not been updated since the Direct Loan Program was established in 1994.

In 2010, Congress amended the HEA to end the making of new loans under the FFEL Program effective July 1, 2010. Since that date, all new subsidized and unsubsidized Stafford Loans, PLUS Loans, and Consolidation Loans have been originated in the Direct Loan Program. In implementing this change, the Department found that the operational criteria being used in the Direct Loan Program to determine whether an applicant for a PLUS loan has an adverse credit history were not consistent with the definition of ''adverse credit history'' in the Direct Loan Program regulations or with the regulations for the FFEL Program. Specifically, the Department determined that PLUS loan applicants who had debts that were in collection or charged off were passing the adverse credit history check even though these applicants were 90 or more days delinquent on a debt, which constitutes an adverse credit history under the Department's regulations. Once the inconsistency was identified, the Department modified its procedures in November 2011 so that borrowers with debts in collection or which were charged off would be considered to have an adverse credit history. This change increased the number of parent and graduate and professional student PLUS loan applicants who were determined to have an adverse credit history and thus, were originally ineligible for a PLUS loan. As a result of the increased initial denial rate, the Department determined that it would be appropriate to review the adverse credit history standards that were originally established in 1994. To reflect programmatic and economic changes that have occurred since 1994, the Department proposes to amend § 685.200(b) and (c) to update the regulatory requirements governing PLUS loan adverse credit history determinations.

Public Participation

On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467) announcing topics for consideration for action by a negotiated rulemaking committee. A correction to this document was published in the **Federal Register** on April 30, 2013 (78 FR 25235). The topics for consideration listed in these documents were: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act made by the Violence Against Women Reauthorization Act of 2013; and the definition of ''adverse credit history'' for borrowers in the Federal Direct PLUS Loan Program. In the April 16, 2013, document, we announced three public hearings at which interested parties could comment on the negotiated rulemaking topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. On May 13, 2013, we published in the **Federal Register** (78 FR 27880) a document announcing the

addition of a fourth hearing. The hearings were held on—

May 21, 2013, in Washington, DC;
May 23, 2013, in Minneapolis, Minnesota;
May 30, 2013, in San Francisco, California; and
June 4, 2013, in Atlanta, Georgia.

We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

Written comments submitted in response to the April 16, 2013, **Federal Register** document may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2012–OPE–0008. You can link to the ED–2012–OPE–0008 docket as a related docket inside the ED–2014–OPE–0082 docket associated with this notice of proposed rulemaking. Alternatively, individuals can enter the docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket. Instructions for finding comments are also available on the site under ''How to Use Regulations.gov'' in the Help section.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On November 20, 2013, the Department published a document in the **Federal Register** (78 FR 69612) announcing its intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. The document set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State Attorneys General and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations.

Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General's Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General's Office, representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Knepfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, non-profit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on

February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. In response to requests from members of the negotiating committee, the Department provided extensive PLUS loan data to the committee prior to the March session. During the March session, the Department proposed adding an additional negotiated rulemaking session to the schedule to give the negotiators sufficient time to consider the PLUS loan data. The negotiators agreed to add a fourth and final session held on May 19–20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: Clock to credit hour conversion; State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would have to include consensus on all six issues.

During the meeting, the Department explained that it planned to include the proposed regulations that would be published after completion of the negotiated rulemaking process in two separate NPRMs. One NPRM would contain the proposed PLUS loan adverse credit history regulations. The second NPRM would contain all the remaining proposed regulations on the negotiating agenda. This is consistent with past practice for publishing NPRMs, as the Department generally publishes proposed loan program regulatory changes separately from proposed regulations for the Student Assistance General Provisions regulations in 34 CFR Part 668 or other title IV, HEA program regulations when there are no shared cross-programmatic or other conforming changes involved.

Non-Federal negotiators encouraged the Department to take action quickly with respect to the PLUS loan adverse credit history regulations. The Department said it would consider designating final regulations resulting from this NPRM for early implementation under section 484(c)(2) of the HEA.

During committee meetings, the committee reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on May 20, 2014, the committee did not reach consensus on the Department's proposed regulations. For this reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info.*

Summary of Relevant Data

PLUS Loan Data

At the first negotiating session, the non-Federal negotiators asked the Department to provide certain data about the PLUS loan program to the negotiating committee. The non-Federal negotiators asked if the Department could calculate PLUS loan cohort default rates. They also asked for information on PLUS loan volume—both numbers of borrowers and amounts borrowed. Non-Federal negotiators asked to see rates of PLUS loan denials due to an adverse credit history, broken out by school sector. In addition, they asked for data on the frequency of different adverse credit conditions that result in denial of a PLUS loan.

The Department agreed to provide PLUS loan data for the PLUS loan adverse credit history discussion at the second negotiated rulemaking session.

The Session 2 Data

Prior to the second negotiated rulemaking session, the Department provided the non-Federal negotiators with charts containing the following data:

- Debt of PLUS, Parent PLUS, and Grad PLUS Borrowers;
- PLUS Credit Check Denial and Remediation Rates by Sector and by Program Offering;
- Credit Check Declination Rate by Sector by Year;
- Top Five Credit Check Declination Reasons by Sector by Year;
- PLUS Borrower 3-Year Cohort Default Rate; and
- AY 2012–13 Credit Check Approval and Denials.[1]

In addition, during the second session, the Department provided the negotiators with data breaking out PLUS loan disbursements under the Direct Loan and FFEL programs from 2006 to 2010.[2]

The non-Federal negotiators expressed appreciation to the Department for providing the requested data about PLUS loans. The non-Federal negotiators also asked for additional data in connection with the charts showing PLUS loan remediation rates (the rates at which applicants who were initially denied PLUS loans due to an adverse credit history were able to obtain PLUS loans; or, if the parent did not obtain PLUS loans, the rates at which the parent's dependent children were able to receive additional unsubsidized loans) and PLUS loan cohort default rates. The Department agreed to provide this additional data for the third negotiated rulemaking session.

The Session 3 Data

Prior to the third negotiated rulemaking session, in response to the requests made during the second session, the Department provided the non-Federal negotiators with amended versions of the following charts:

- PLUS Credit Check Denial Remediation Rates by Sector and by Program Offering (two versions reflecting breakout of remediation by obtaining an endorser, submitting documentation of extenuating circumstances, or the dependent student's receipt of additional unsubsidized loans); and
- PLUS Borrower Three-Year Cohort Default Rates (broken out by the FFEL and Direct Loan programs).[3]

Summary of Proposed Changes

The proposed regulations would—

- Revise the student PLUS loan borrower eligibility criteria to state more clearly that the PLUS loan adverse credit history requirements apply to graduate or professional student PLUS loan borrowers.
- Add definitions of the terms ''charged off'' and ''in collection'' for

[1] All of the charts provided to the negotiators are available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#2.*

[2] This data is available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#2.*

[3] These charts are available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#3.*

purposes of determining whether an applicant for a PLUS loan has an adverse credit history.

- Specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.
- Provide that the combined outstanding balance threshold of $2,085 may be adjusted over time on a basis determined by the Secretary.
- Revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstance exist for a PLUS loan applicant who is determined to have an adverse credit history.
- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the Secretary's satisfaction that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary before receiving the loan.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Student PLUS Borrower (34 CFR 685.200(b))

Statute: Section 428B(a)(1)(A) of the HEA specifies that a graduate or professional student with an adverse credit history is not eligible to borrow a PLUS loan.

Current Regulations: Current § 685.200(b)(5) specifies that a student must meet the requirements of § 685.200(c)(1)(vii) to qualify for a PLUS loan. Current § 685.200(c)(1)(vii) includes the adverse credit history requirements for parent PLUS loan borrowers.

Proposed Regulations: Proposed § 685.200(b)(5) specifies that a graduate or professional student must meet the requirements ''that apply to a parent'' under § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) to qualify for a PLUS loan. Proposed § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) would include the adverse credit history requirements for parent PLUS borrowers.

Reasons: The proposed regulations would revise § 685.200(c). Due to the revision to § 685.200(c), we would also need to revise the cross-reference in § 685.200(b)(5). New § 685.200(c)(1)(viii)(B) refers to a parent with an adverse credit history, rather than an applicant with an adverse credit history. Therefore, a conforming change, adding a reference to the ''parent'', would be required in § 685.200(b)(5). In addition, proposed § 685.200(b)(5) would clarify that the adverse credit history requirements that apply to parent PLUS borrowers under § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) also apply to all student PLUS borrowers.

Some of the non-Federal negotiators contended that there should be different eligibility standards for parent PLUS loan borrowers and graduate and professional student PLUS loans borrowers. These negotiators argued that graduate and professional students should be eligible for PLUS loans without application of the adverse credit history criteria. Alternatively, one non-Federal negotiator requested that the Department consider defining ''adverse credit history'' differently for graduate and professional student PLUS loan borrowers than for parent PLUS loan borrowers.

We did not agree with the suggestion to have different standards for parent and student PLUS loan applicants. We noted that, pursuant to the HEA, there is a single PLUS loan program that provides loans for both graduate and professional students and parents of dependent students. The statutory requirement that a PLUS loan applicant not have an adverse credit history applies equally to student and parent applicants. We see no basis under the HEA for establishing different regulatory definitions of ''adverse credit history'' for graduate and professional student applicants and parent PLUS applicants.

Parent PLUS Borrower: Definitions (34 CFR 685.200(c)(1))

Statute: None.

Current Regulations: None.

Proposed Regulations: The proposed regulations would define the terms ''charged off'' and ''in collection'' for purposes of adverse credit history determinations. Proposed § 685.200(c)(1)(i) would define the term ''charged off'' to mean a debt that a creditor has written off as a loss, but that is still subject to collection action. Proposed § 685.200(c)(1)(ii) would define the term ''in collection'' to mean a debt that has been placed with a collection agency by a creditor, or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

Reasons: Under the current regulations, an applicant who has debts that are in collection or that has been charged off will be determined to have an adverse credit history, but the regulations do not define these terms. The proposed definitions for these terms are commonly understood definitions in the collections industry. Although some of the non-Federal negotiators did not agree that these conditions should constitute adverse credit, they agreed that if the Department is going to consider debts that are in collection or that have been charged off as indicators that a borrower has an adverse credit history, the terms should be defined in the regulations.

Parent PLUS Borrower: Adverse Credit History (34 CFR 685.200(c)(2))

Statute: Section 428B(a)(1)(A) of the HEA provides that a parent of a dependent student is not eligible to borrow a PLUS loan if the parent has an adverse credit history.

Current Regulations: Current regulations under § 685.200(c)(1)(vii)(B) establish the conditions under which a PLUS loan applicant will be considered to have an adverse credit history. Under § 685.200(c)(1)(vii)(B), an adverse credit history means that, as of the date of the credit report, the applicant: (1) Is 90 or more days delinquent on any debt; or (2) has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the HEA during the five years preceding the date of the credit report.

Proposed Regulations: Under proposed § 685.200(c)(2)(viii)(B)(*1*), an adverse credit history would mean that a parent (or, by cross-reference, a student) has one or more debts with a total combined outstanding balance greater than $2,085, that are 90 or more days delinquent as of the date of the credit report, or that have been charged off or placed in collection during the two years preceding the date of the credit report. Proposed § 685.200(c)(2)(viii)(B)(*1*) would provide that the $2,085 threshold amount may be adjusted over time on a basis determined by the Secretary. In proposed § 685.200(c)(2)(viii)(B)(*2*) the Department would retain the current provision that provides that a parent or student has an adverse credit history if the parent or student has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under

title IV of the HEA during the five years preceding the date of the credit report.

Reasons: After the Department corrected its implementation of the adverse credit history standards in November 2011, some borrowers who had qualified for PLUS loans in earlier years were determined to have an adverse credit history when they applied for subsequent PLUS loans even though their credit history had not substantially changed. In many cases, these applicants requested reconsideration on the basis of extenuating circumstances as permitted under the regulations.

Based on its experience in handling PLUS loan applicant requests for reconsideration on the basis of extenuating circumstances, the Department concluded that it was appropriate to update the standards for determining that an applicant has an adverse credit history to reflect programmatic and economic changes since the standards were established in 1994.

We believe that the proposed changes to the PLUS loan adverse credit history regulations will improve the adverse credit history determination process by incorporating some of the circumstances that the Department considers during the reconsideration process into the standards for initial determinations of an adverse credit history. We expect that making these changes to the definition of ''adverse credit history'' will reduce the number of applicants who, under the current regulations, are initially denied PLUS loans due to an adverse credit history, but upon further review, the Department determines have extenuating circumstances. During the negotiated rulemaking sessions, the committee members discussed how the proposed changes would serve three public interests: (1) Ensuring greater access to higher education for all students and families; (2) ensuring that borrowers do not take out loans that they will be unable to repay without hardship; and (3) protecting the Federal fiscal interest by ensuring that borrowers repay their student loans. Some of the non-Federal negotiators expressed the view that the primary focus of the title IV, HEA programs, including the PLUS loan program, should be increasing access to higher education. These negotiators argued that the lending standards that apply to commercial loans should not be applied to PLUS loans, which serve a compelling public interest. The negotiators expressed the view that it is a parent's (or graduate or professional student's) decision as to whether to borrow a PLUS loan, and in what amount, even if the applicant's financial circumstances or history may indicate that the applicant could experience difficulty in paying it back. One non-Federal negotiator strongly recommended that the Department return to the adverse credit history standard as it had been implemented in the Direct Loan program prior to the changes made in November 2011, under which debts in collection or that were charged off did not constitute adverse credit.

Other non-Federal negotiators argued that the Department should take action to prevent overborrowing by parents and students. These negotiators argued that a return to the standard in the Direct Loan program used prior to November 2011 would encourage both student and parent borrowers to take out greater, perhaps unaffordable, amounts of PLUS loan debt regardless of the financial circumstances or history of the applicant. They also argued that, in addition to ensuring access to higher education, the Department should consider whether or not borrowers could repay these loans.

In expressing their concerns about overborrowing and the potential for high debt loads, some non-Federal negotiators noted that, unlike Direct Subsidized and Direct Unsubsidized loans, there are no annual or aggregate loan limits for PLUS loans and a PLUS loan can be taken out in an amount up to the student's cost of attendance. They further noted that parent PLUS loan borrowers are not eligible for income-driven repayment plans and it is very difficult to qualify for a bankruptcy discharge of a student or parent loan. To that end, some non-Federal negotiators recommended establishing annual and aggregate loan limits for PLUS loan borrowers. We noted that loan limits in the title IV, HEA programs, including the PLUS loan program, are based on the relevant statute, and may not be established through regulation.

Some non-Federal negotiators recommended considering the applicant's ability to repay in an adverse credit history determination in order to prevent overborrowing of PLUS loans. We noted that the HEA would need to be amended to allow consideration of the applicant's ability to repay. Rather, adverse credit history is a measure of an individual's history of repaying existing debt. It does not measure whether the individual has the financial ability to repay a specific level of debt, but whether that individual has repaid debt in the past.

In developing the proposed regulations, we attempted to strike a balance between the public policy interests of ensuring access to higher education while helping to ensure that borrowers do not take out loans that their past financial credit history indicates they will not repay. Based on our experience in evaluating requests for reconsideration based on extenuating circumstances, we expect that more borrowers would qualify for PLUS loans under the adverse credit history standard in the proposed regulations without the need to demonstrate extenuating circumstances.

The proposed definition of ''adverse credit history'' has several components. Each component is discussed separately in the following sections.

Component 1—Outstanding Balance Greater than $2,085

Statute: None.

Current Regulations: Current § 685.200(c)(1)(vii)(D) specifies that, for purposes of documenting extenuating circumstances, the Secretary may rely on a satisfactory statement from the applicant explaining any delinquency with an outstanding balance greater than $500.

Proposed Regulations: Under the proposed regulations, the amount of the applicant's debt would be taken into account during the initial determination of whether the applicant has an adverse credit history, rather than as part of the process for documenting extenuating circumstances following denial of a PLUS loan. In addition, the proposed regulations would establish a standard that an applicant is not considered to have an adverse credit history unless the applicant's debts have a total combined outstanding balance greater than $2,085.

Reasons: After the November 2011 operational change to the Department's implementation of the adverse credit history definition, the Department adjusted the $500 amount, referred to as ''the threshold amount,'' to $780 to account for inflation since 1994. Later, the Department increased the threshold amount from $780 to $2,085. The Department selected this level to reflect the estimated median debt level for all debts with a status of in collection, charged off, or 90 or more days delinquent, from all parent PLUS loan denials resulting from all credit checks conducted between the spring of 2012 and the spring of 2013. The Department now proposes to use the $2,085 threshold amount in the initial determination of whether an applicant has an adverse credit history to reflect current operational practice in our reconsideration process.

Component 2—Adjustment Over Time

Statute: None.

Current Regulations: None.

Proposed Regulations: Under the proposed regulations, the $2,085 amount may be adjusted over time on a basis determined by the Secretary.

Reasons: Several of the non-Federal negotiators recommended that the Department index the $2,085 amount to the rate of inflation. The negotiators argued that by indexing the amount to an accepted measure of inflation, increases could be calculated and implemented without the necessity of amending the regulations.

Most of these negotiators recommended indexing the $2,085 amount to the Consumer Price Index (CPI), a measure of inflation determined by the Bureau of Labor Statistics (BLS). However, BLS calculates several different CPI rates on a monthly basis. The CPI rate most commonly used as a measure of inflation is the Consumer Price Index for All Urban Consumers (CPI–U). The Department considered using the CPI–U as the basis for indexing, but decided to invite comment on which index would be most appropriate in this context, and whether to base the adjustment of the $2,085 amount on a measure other than inflation.

One non-Federal negotiator suggested that the Department should adjust the amount of debt annually. This negotiator argued that, while small, short-term changes would have little impact in one year, over a period of time they could have a significant impact. Another non-Federal negotiator suggested using the CPI, but averaging the rate over time. This negotiator noted that averaging the rate over time would smooth out abrupt and relatively short-term changes in CPI and thus reduce volatility.

The Department is open to adjusting the $2,085 amount. Therefore, we are proposing in the regulations that the Secretary may adjust the amount over time, on a basis determined by the Secretary. Any adjustments that the Secretary makes to the $2,085 amount would be announced through a Notice in the **Federal Register**. We invite comment on this provision, and welcome recommendations on an appropriate measure of inflation to use in adjusting this amount, or whether another measure of growth or decline in consumer debt due to economic conditions may be a more appropriate measure.

As discussed in the ''Operational Issues'' section of this preamble, the Department intends to collect, and where appropriate publish, information about the performance of parent and graduate/professional student PLUS loans, including default rate information based on credit history characteristics of Plus loan applicants and individual institutional default rates.

Component 3—Debts 90 or More Days Delinquent

Statute: None.

Current Regulations: Current § 685.200(c)(1)(vii)(B)(*1*) specifies that a PLUS loan applicant who is 90 or more days delinquent on any debt has an adverse credit history.

Proposed Regulations: The proposed regulations would maintain the 90 or more days delinquent standard.

Reasons: Some of the non-Federal negotiators argued that the current delinquency standard of 90 or more days past due is too short for adverse credit history determinations. These negotiators recommended extending the past due period to 120 days or 180 days. They asserted that credit reports often have errors that may not be corrected during a 90-day timeframe.

In the absence of a consistent industry-wide standard, we decided to maintain the standard of 90 or more days delinquent in the proposed regulations. We rely on credit reports to determine whether an applicant is delinquent on a debt, as the number of days a debt is past due is included on an individual's credit report until an account is placed in collection. Based on our experience, most creditors send accounts to collection once they are 90 days' delinquent. Once an account is placed in collection, the number of days past due is generally not reflected on the credit report. Therefore, a standard beyond the current 90-day standard would be more difficult to track.

With regard to errors on credit reports, a PLUS loan applicant would have the opportunity during the process for determining whether extenuating circumstances for the adverse credit history condition exist to show that the determination of an adverse credit history was based on an error in the credit report by providing an updated credit report or information from the creditor.

Component 4—In Collection or Charged Off

Statute: None.

Current Regulations: None.

Proposed Regulations: Under the proposed regulations, an applicant with debts in collection or debts that have been charged off during the two years preceding the date of the credit report would have an adverse credit history.

Reasons: Under current operational practice, a borrower with debts in collection or debts that have been charged off in the preceding five years is considered to have an adverse credit history. One non-Federal negotiator recommended that the Department return to the operational standard used prior to November 2011, when the Department did not consider these circumstances to constitute an adverse credit history.

We do not agree that the earlier operational practice met the purposes of the statute in determining an adverse credit history. We believe it would create an inconsistency in the regulations to not consider as an adverse credit history accounts in collection or debts that have been charged off, while including accounts that are 90 or more days delinquent. Generally, accounts in collection or accounts that have been charged off are well past the 90-day delinquency stage.

Although we do not propose to change the treatment of collection accounts and charged-off accounts in the determination of an adverse credit history, we did agree to propose to reduce the period of time for which such accounts would be considered as an adverse credit history. The proposed regulations would reduce the current look-back period of five years to two years preceding the date of the credit report. We believe that this standard would screen out most anomalous conditions, such as a single bad debt on an otherwise clean credit report.

Non-Federal negotiators made varying proposals for the look-back period for debts that are in collection or charged off. Some negotiators recommended a one-year look-back period. We do not believe, however, that one year is sufficient, particularly when the past due status of the account might be reduced through a series of payments, but not eliminated, and then increase again.

Other non-Federal negotiators recommended a three-year look-back period. They argued that, in many States, debts have a statute of limitations of three years. However, because the statute of limitations on debts varies from State to State, we do not think that it is a useful standard in determining the length of the look-back period for collections and charge-offs in the PLUS loan program.

Based on these considerations, we believe that the proposed two-year look-back period for debts that are in collection or have been charged off is appropriate. A one-year look-back period is too short to measure a PLUS loan applicant's history and a five-year

period is more closely associated with the major, long-term items indicating an adverse credit history in proposed § 685.200(c)(2)(viii)(B)(*2*).

Extenuating Circumstances (34 CFR 685.200(c)(2))

Statute: None.

Current Regulations: Section 685.200(c)(1)(vii)(A)(*3*) specifies that a parent who has an adverse credit history, but who documents to the satisfaction of the Secretary that extenuating circumstances exist, may be eligible for a PLUS loan. Section 685.200(c)(1)(vii)(D) of the current regulations (as amended by final regulations published on November 1, 2013) provides that the Secretary may determine that extenuating circumstances exist based on documentation that includes, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from a borrower explaining any delinquencies with an outstanding balance of less than $500.

Proposed Regulations: Proposed § 685.200(c)(2)(viii)(A)(*3*) states that, in addition to providing documentation to the Secretary demonstrating that extenuating circumstances exist, a parent or student with an adverse credit history would be required to complete PLUS loan counseling offered by the Secretary to become eligible for a PLUS loan.

Proposed § 685.200(c)(2)(viii)(D)(*2*) would eliminate from the list of possible extenuating circumstances a statement from an applicant explaining any delinquencies with an outstanding balance of less than $500.

Reasons: During the negotiations there was a significant amount of discussion about methods for improving financial literacy for PLUS loan applicants. Many non-Federal negotiators recommended that all parent PLUS loan applicants be required to complete loan counseling before receiving a PLUS loan, much as first-time student borrowers are required to complete entrance counseling before receiving Direct Subsidized Loans, Direct Unsubsidized Loans, or student Direct PLUS loans. The Department explained, however, that, while loan counseling is a statutory requirement for student borrowers, the HEA does not require parent PLUS applicants to receive loan counseling prior to receiving a PLUS loan. Therefore, the Department does not have the legal authority to extend this requirement to all PLUS loan applicants.

However, the Department is proposing through these regulations that a PLUS loan applicant who is ineligible for a PLUS loan due to an adverse credit history, but who documents to the satisfaction of the Secretary that extenuating circumstances exist, would be required to complete loan counseling as an additional condition for receiving the PLUS loan. The Department also plans to offer enhanced PLUS loan consumer information, as discussed under ''Operational Issues.''

The proposed regulations do not apply the loan counseling requirement to a PLUS loan applicant who has an adverse credit history but is eligible to receive a PLUS loan by obtaining an endorser who does not have an adverse credit history. A PLUS loan applicant who obtains an endorser is still primarily responsible for repaying the PLUS loan. The Department believes that these applicants, like PLUS loan applicants who qualify due to extenuating circumstances, would benefit from PLUS loan counseling. Therefore, the Secretary is requesting comment on whether the loan counseling requirement for applicants who qualify due to extenuating circumstances should also apply to applicants who obtain an endorser.

Operational Issues

Validity of Credit Checks for 90 Days

As explained in the ''Background'' section of this preamble, the Department conducts a credit check on each applicant for a PLUS loan to determine whether he or she has an adverse credit history. A credit check is conducted when a school submits a PLUS loan origination record to the Department's Common Origination and Disbursement (COD) System, or when an applicant for a PLUS loan completes the optional Direct PLUS Loan Request for Supplemental Information (Direct PLUS Loan Request) on the Department's StudentLoans.gov Web site. Alternatively, a school may submit a credit check request for a PLUS loan applicant to the COD System Web site.

Under the Department's current procedures, an approved credit check remains valid for purposes of determining an applicant's eligibility to receive a PLUS loan for 90 days from the date on which the credit check was performed. That is, any action that would normally trigger a credit check (for example, the submission of a Direct PLUS Loan Request or a PLUS loan origination record) will not do so if a prior credit check on the applicant was conducted within the past 90 days. This 90-day window reflects the Department's long-standing practice in the Direct Loan Program and is consistent with the standard previously used by most FFEL Program lenders when conducting credit checks on applicants for Federal PLUS Loans. The 90-day window is not in the Direct Loan Program regulations, but it was adopted by the Department as a reasonable standard for ensuring that a credit check is conducted within a timeframe that will result in an accurate representation of a PLUS loan applicant's current credit history prior to the receipt of PLUS loan funds.

During the negotiations, many of the non-Federal negotiators expressed concern that the current 90-day period is not a long enough period of validity for the credit check when disbursing PLUS loans. They noted that, in certain situations, the requirement that a new credit check be conducted (if the most recent credit check was more than 90 days in the past) can mean that a PLUS loan applicant who was initially approved for a PLUS loan for the purpose of a school's financial aid award packaging for the upcoming academic year may later be denied the loan if an event that triggers another credit check occurs more than 90 days after the date of the prior credit check, and if the subsequent credit check determines that the borrower has an adverse credit history. For example, if a student or parent was approved for a PLUS loan for the purpose of a school's financial aid award packaging for the upcoming academic year based on the results of a credit check that was completed when the applicant submitted a Direct PLUS Loan Request, but the school is not able to submit the PLUS loan origination record within 90 days of the date of that credit check, a second credit check will be conducted when the loan origination record is submitted.

Similarly, an individual who received a PLUS loan based on the results of a credit check may later request additional loan funds by submitting another Direct PLUS Loan Request and indicating that he or she wants to increase the amount of an existing PLUS loan. If the borrower submits the Direct PLUS Loan Request more than 90 days after the date of the prior credit check, another credit check will be conducted. In both instances, the subsequent credit check may potentially result in a determination that the borrower now has an adverse credit history (if the applicant's financial circumstances have changed since the date of the prior credit check), and therefore is ineligible for a PLUS loan or for an increased loan amount, even though the borrower was

previously approved based on the results of an earlier credit check.

Many of the non-Federal negotiators stated that applicants who are determined to be eligible to receive a PLUS loan based on the results of a credit check should be able to rely on that approval if they later need to request an increase in the amount of an existing loan. Accordingly, some of these negotiators suggested that the Department should consider changing its procedures so that the results of a credit check would remain valid for a full year after the date of the credit check. Other negotiators proposed that the Department go even further and make a credit check valid for the purpose of a parent's or student's eligibility to receive PLUS loans for the duration of a student's program of study if the borrower was not determined to have an adverse credit history.

After considering the concerns expressed by some of the non-Federal negotiators, the Department has decided to modify its procedures so that a credit check that indicates that the applicant does not have an adverse credit history would remain valid for 180 days. We believe that extending the window for an even longer period of time would result in borrowers receiving PLUS loan funds based on credit checks that do not reasonably reflect the applicant's most current financial circumstances. However, extending the window from the current 90 days to 180 days should satisfactorily address the concerns raised by some of the negotiators.

Although the Department agreed with the non-Federal negotiators that it would be appropriate to extend the period of time during which an approved credit check is valid, the Department also reminded the negotiators that under current procedures it is possible for a school to process a borrower's request for an increase in the amount of an existing PLUS loan without subjecting the borrower to a second credit check. In such cases, a school may simply submit an upward adjustment to the amount of an existing PLUS loan to the COD system, without submitting a new PLUS loan origination record. The submission of an upward adjustment will not trigger a new credit check, regardless of the date of the most recent credit check for the borrower. Also, it is not mandatory for borrowers to request an increase in the amount of an existing loan by submitting a Direct PLUS Loan Request, which may trigger a second credit check. A school may obtain a borrower's request for a loan amount increase by other means.

Enhancing PLUS Borrower Consumer Information

As discussed under the ''Extenuating Circumstances'' section of this preamble, the negotiating committee discussed methods for improving access to consumer information for PLUS loan applicants. In particular, many non-Federal negotiators believed that there is currently a lack of sufficient consumer information specifically targeted at parent PLUS loan applicants.

The Department agrees with the concerns expressed by the negotiators and will develop enhanced consumer information and resources for parent PLUS applicants that could be incorporated within the existing PLUS loan application process or made available to parents through links to information on other Department Web sites. At a minimum, the Department will offer voluntary entrance counseling to all parent PLUS applicants which would provide clear information on the monthly payment that would be required for the loan the applicant is requesting as well as what the total monthly payment would be if the applicant borrows the same amount for each year of a dependent student's four-year or six-year undergraduate program. In addition, the Department will expand its current online financial tools to include a PLUS-specific loan calculator that would allow parents to evaluate their future ability to repay PLUS loans based on their individual economic circumstances.

The Department intends to collect, and where appropriate publish, information about the performance of parent and graduate/professional student PLUS loans, including default rate information based on credit history characteristics of PLUS loan applicants and individual institutional default rates. Providing more detailed information about the PLUS loan program will assist the Department in evaluating the definition of adverse credit history in the future and will allow institutions to understand the impact of PLUS loan borrowing on students and parents in order to help them better support their parent and student PLUS borrowers.

We invite suggestions for the specific types of enhanced consumer information that the Department should develop for PLUS applicants, particularly parent PLUS applicants who may be planning to borrow for more than one dependent over multiple academic years. We also invite comments on what other types of information about Parent PLUS loans would be helpful for institutions and consumers, and we invite suggestions on the most effective way for the Department to communicate with parent PLUS borrowers.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

The Department makes Direct PLUS Loans to graduate or professional students and to parents of dependent undergraduate students to help pay for education expenses not covered by other financial aid. According to data from the Department's Federal Student Aid (FSA) office, approximately 3.9 million borrowers owe a balance of $100 billion in total Direct PLUS loans. The Department is proposing these regulations to update the standard for determining if a potential borrower has an adverse credit history for purposes of eligibility for a Direct PLUS loan.

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

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that

their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits to borrowers and institutions. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into five sections. The ''Need for Regulatory Action'' section discusses why updating the regulatory requirements governing PLUS loan adverse credit history determinations is necessary.

The ''Summary of Proposed Regulations'' section briefly highlights the updates, revisions, and new requirements for PLUS loan applicants that are included in the proposed regulations.

The ''Costs, Benefits, and Transfers'' section discusses the impact of the proposed regulations on institutions of higher education, students, and parents. We anticipate that the proposed regulations would result in a lower denial rate for PLUS loan applicants. For some parents and graduate and professional students who would be denied PLUS loans under the current standards, the proposed regulations would allow them to borrow a PLUS loan in an amount up to the cost of attendance.

Under ''Net Budget Impacts,'' we present our estimate that the proposed regulations would not have a significant net budget impact on the Federal government.

In ''Alternatives Considered,'' we describe other approaches we considered for key provisions of the proposed regulations, including different definitions for adverse credit history for parents and graduate students, criteria regarding the borrower's ability to repay as part of the adverse credit history definition, indexing the $2,085 threshold amount to the rate of inflation, increasing the delinquency period of 90 or more days past due, and increasing the length of time for the look-back period for debts that are in collection or charged off.

Need for Regulatory Action

Congress amended the HEA in 2010 to end the origination of new loans under the FFEL Program. All new subsidized and unsubsidized Stafford Loans, PLUS Loans, and Consolidation Loans are made under the Direct Loan Program. To be eligible for a Federal Direct PLUS loan, under the statute, an applicant must not have an adverse credit history. To determine if an applicant has an adverse credit history the Department conducts a credit check on the applicant. A PLUS loan applicant is considered to have an adverse credit history if the credit report shows the applicant is 90 days delinquent on any debt, or has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title IV, HEA program debt in the five years preceding the date of the credit report.

Since 2011, we have made operational changes to improve compliance with the regulations and the practices of the FFEL program. Specifically, the Department applied operational standards that were similar to those in the FFEL program where an applicant with debts in collection or charged off is considered to have an adverse credit history because the applicant is 90 or more days delinquent on a debt. Based on these standards, more PLUS loan applicants were determined to have an adverse credit history and had to request reconsideration of the PLUS loan denial through the Department's process for determining whether extenuating circumstances for an adverse credit history condition exist. After these changes resulted in an increase in PLUS loan denials, the Department made operational changes to balance making the Direct Loan PLUS program consistent with the old FFEL regulations and the public policy goal of maintaining access to higher education. In the interest of providing transparency to institutions and families, we concluded that the operational changes that the Department instituted in its operating procedures should be updated in the regulatory requirements governing PLUS loan adverse credit history determinations, which were originally established in 1994.

The proposed regulations would update the standard for determining if a potential borrower has an adverse credit history and more specifically would amend the definition of ''adverse credit history'' and require PLUS loan counseling for a parent or student with an adverse credit history who is approved for a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist.

Summary of Proposed Regulations

The proposed regulations would update the eligibility requirements for a PLUS loan. Specifically, the proposed regulations would state more clearly that the PLUS loan adverse credit history requirements apply to graduate student PLUS loan borrowers, as well as parent PLUS borrowers. In addition, the proposed regulations would define the terms ''in collection'' and ''charged off'' for purposes of determining whether an applicant for a PLUS loan has an adverse credit history. They would also specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report. The proposed regulations would provide that the debt threshold of a combined outstanding balance greater than $2,085 may be adjusted over time

on a basis determined by the Secretary. The proposed regulations would also revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstances exist for a PLUS loan applicant who is determined to have an adverse credit history. Finally, the regulations would specify that an applicant for a PLUS loan who is determined to have an adverse credit history, but who documents to the Secretary's satisfaction that extenuating circumstances exist, must complete PLUS loan counseling offered by the Secretary before receiving the PLUS loan.

Costs, Benefits, and Transfers

Under the proposed regulations, the Department expects that the number of approved applications for parent and graduate and professional student PLUS loans will increase from 2012–2013 levels, and that this will result in a series of costs, benefits, and transfers. The most significant factor leading to this increase is expected to be the establishment of a new standard for the determination that an applicant has an adverse credit history. In particular, under the proposed regulations, an adverse credit history means that the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

Over 70 percent of the PLUS loan application denials in the past three academic years have been a result of delinquent debt that was held by the original creditor, charged off, or was in collection status.

Reason for credit check denial	Academic year 2011–2012 (percent)	Academic year 2012–2013 (percent)	Academic year 2013–2014 (through February 2014) (percent)
ACCOUNT IN COLLECTION	40.9	46	46
CHARGE OFF	21.3	24	24
PRESENTLY 90 OR MORE DAYS DELINQUENT	11.1	14	13
CHAPTER 7, 11, OR 12 BANKRUPTCY	7.9	5	6
COUNTY/STATE/FEDERAL GOVERNMENT TAX LIEN WITHIN LAST 5 YEARS	6.4	3	3
OTHER REASONS	12.3	9	9

We estimate that, under the proposed regulations, approximately 33 percent of the applicants who were initially denied PLUS loans in the 2012–2013 award year would have been approved in the initial process.

	AY 2012–13 PLUS			Number and percentage of denied applications in AY 2012–2013 that would be approved under the proposed regulations	
	Number denied	Number approved	Total	Number	Percentage
All Credit Checks (Original Decision)	1,123,617	1,300,986	2,424,603	371,508	33

We also believe that the proposed regulations would clarify the process by which applicants request reconsideration, and possibly increase the percentage of denied loan applicants who eventually qualify for PLUS loans after requesting reconsideration or obtaining an endorser who does not have an adverse credit history.

Students/Parents

Parent PLUS loan applicants and their dependent students would be affected by the proposed regulations. Under the proposed regulations, a larger number of parent PLUS loan applicants would be approved for PLUS loans on behalf of their dependent students. As a result, some families could accrue higher loan debt amounts.

Unlike Direct Subsidized and Unsubsidized loans, PLUS loans do not have annual or lifetime aggregate limits. PLUS loans can be borrowed in any amount up to and including the full cost of attendance, which is an amount that is determined by individual institutions and is beyond the control of the Department.

In the 2011–2012 award year, the median total PLUS loan debt for a parent who borrowed a PLUS loan at any point for a dependent undergraduate student ages 18 to 24 in the student's fourth (senior) year or above was $27,700.[4] If the dependent student had borrowed the maximum amount of his or her Direct Loans, the total debt shared by the parent and student would be equal to $58,700, $1,300 more than the aggregate limits for an independent student.

Parents who take out PLUS loans on behalf of their dependent children are acquiring some of the debt burden associated with their child's education. Parent PLUS loans have higher interest rates and origination fees than Direct Subsidized and Direct Unsubsidized loans.

In the example that follows, the Department compares two sample borrowers to show the potential impact of borrowing under the parent PLUS Loan Program compared to borrowing up to the annual Direct Loan limits for independent students. Student A's parent applied for a parent PLUS loan; however, Student A's parent was not approved for parent PLUS loans in any of the four years. Therefore, Student A was eligible to borrow Unsubsidized Stafford loans up to the independent borrower limits. Students B's parent was approved for parent PLUS loans for all four years to help pay for Student B's college education. The total amount borrowed by each of the families in this example is equal. The example also assumes that both borrowers took out loans every year of college, the student graduated in four years, and repayment began following graduation. Student A deferred all payments on the

[4] *http://nces.ed.gov/programs/digest/d13/tables/dt13_331.95.asp*

Unsubsidized Stafford loans and Student B's parent deferred payments on their PLUS loans until six months after graduation. The example also uses the current interest rates and origination fees (as of July 1, 2014) and assumes they remain unchanged through the two students' matriculation (this is only an example; although interest rates are fixed over the life of the individual loan, those rates are updated annually and origination fees can be changed.)

	Direct subsidized	Direct unsubsidized	Interest rate	Months until repayment	Amount owed upon entering repayment
Student A: Dependent student whose parents were denied a parent PLUS loan					
1st Year Fall	$ 1750	$ 3,000	0.0466	50	$ 5,424
1st Year Spring	1,750	3,000	0.0466	45	5,365
2nd Year Fall	2,250	3,000	0.0466	38	5,791
2nd Year Spring	2,250	3,000	0.0466	33	5,731
3rd Year Fall	2,750	3,500	0.0466	26	6,717
3rd Year Spring	2,750	3,500	0.0466	21	6,648
4th Year Fall	2,750	3,500	0.0466	14	6,551
4th Year Spring	2,750	3,500	0.0466	9	6,482
				Total Due	**48,709**

	Direct subsidized	Direct unsubsidized	Interest rate	Amount owed upon entering repayment	Parent PLUS	Interest rate	Months until repayment	Amount owed upon entering repayment
Student B: Dependent student with parents approved for PLUS loans								
1st Year Fall	$ 1,750	$ 1,000	0.0466	$ 2,995	2000	0.0721	50	$ 2,712
1st Year Spring	1,750	1,000	0.0466	2,975	2000	0.0721	45	2,650
2nd Year Fall	2,250	1,000	0.0466	3,456	2000	0.0721	38	2,562
2nd Year Spring	2,250	1,000	0.0466	3,436	2000	0.0721	33	2,499
3rd Year Fall	2,750	1,000	0.0466	3,917	2500	0.0721	26	3,014
3rd Year Spring	2,750	1,000	0.0466	3,897	2500	0.0721	21	2,936
4th Year Fall	2,750	1,000	0.0466	3,870	2500	0.0721	14	2,827
4th Year Spring	2,750	1,000	0.0466	3,850	2500	0.0721	9	2,748
			Total	**28,397**			**Total**	**21,949**
				Total due at the beginning of repayment—combined				**50,345**

As this example demonstrates, at the identical school, the combined parent-student debt upon entering repayment would be higher for the family of Student B than the total debt of Student A because of the higher interest rates (currently 7.21 percent for Direct PLUS loans and 4.66 percent for Direct Subsidized and Unsubsidized loans) and origination fees (currently 4.28 percent for Direct PLUS loans [5] and 1.72 percent for Direct Subsidized and Unsubsidized loans [6]). This example is only meant to show the potential difference between two students using a combination of Direct Subsidized, Direct Unsubsidized, and Direct PLUS loans to fund their education. The example does not address choices individual borrowers may make to manage their student loan debt or the benefits of increased access to PLUS loans, as discussed below. These tables also do not account for a family choosing a less expensive school to account for the lack of access to PLUS loans. These examples also only apply to Parent PLUS loans.

Borrowers may choose to make payments on their loans while in school to decrease the accumulation of interest and decrease the amount of loan debt owed after leaving school. Furthermore, loan disbursement dates and amounts vary by campus. Individual debt loads for borrowers under any loan program will be impacted by borrower behavior.

As borrowers enter into repayment, their loan payments and principal balance amounts will also be impacted by borrower behavior. Benefits such as loan consolidation, forbearance, deferment, and loan forgiveness can have an impact on their overall loan payments.

Increased access to PLUS loans may allow some students to continue their attendance in programs that they otherwise would not be able to afford. While some applicants may use additional Direct Unsubsidized loans to cover their educational expenses after their applicant parents have been denied PLUS loans, others may be unable to make up the difference because of annual or lifetime aggregate limits on Stafford loans. This could result in a student having to withdraw from a particular education program, transfer to another program or institution, or find additional means of financing his or her education, such as private student loans. Since PLUS loans can be borrowed up to the cost of attendance, they may be used to more fully cover funding gaps for dependent students who have exhausted their annual or lifetime aggregate limits for Direct Subsidized and Unsubsidized loans or allow students to attend a more expensive institution. PLUS loans often help lower-income students who may lack the personal or family resources to pay for college.

PLUS loans are generally a better option for students than private student loans. PLUS loans have fixed interest rates and offer more flexibility in respect to repayment plans (such as extended and graduated repayment plans). PLUS loans also offer important consumer protections such as deferments for unemployment, active

[5] Origination fees for Direct PLUS loans will increase to 4.292 percent on October 1, 2014.

[6] Origination fees for Direct Subsidized and Unsubsidized loans will increase to 1.073 percent on October 1, 2014.

duty military service, and economic hardship; and cancellation for occurrences such as death, total and permanent disability or school closure. Private loans, in contrast, are not required to provide such borrower benefits and protections. Private loans also typically have variable interest rates that cost most for those who can least afford them.''

Applicants with an adverse credit history who qualify for a PLUS Loan by demonstrating extenuating circumstances will be required to participate in loan counseling provided by the Department. This requirement could help PLUS loan applicants to make informed decisions and to avoid over-borrowing for their own or their child's education.

Net Budget Impacts

The proposed regulations are not estimated to have a significant net budget impact over the loan cohorts from 2014 to 2024. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

In general, student loan cost estimates are developed using OMB's Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost-of-credit programs. Accordingly, we believe that it is the appropriate methodology to use in developing estimates for the proposed regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

The operational changes to adverse credit history determinations made in 2011 have already been incorporated into the Department's budget baseline. The changes in the proposed regulations, including (1) using $2,085 as an upfront threshold amount in the determination of an adverse credit history, and (2) the reduced look-back period of two years for accounts in collection and accounts that have been charged off to trigger a determination of adverse credit, would likely decrease the number of PLUS loan applicants denied loans based on an adverse credit history determination. This could increase PLUS loan volumes, and decrease the amount of additional Direct Unsubsidized loans taken out by student borrowers whose parents cannot obtain PLUS loans because of adverse credit determinations. Generally, an increase in PLUS loan volume results in net budget savings because of the negative subsidy rate on the overall PLUS loan portfolio.

However, loans made to borrowers who would have been considered to have an adverse credit history before the changes in the proposed regulations could have a higher incidence of default or could be difficult for borrowers to repay. If that were the case, potential savings from any increased PLUS loan volume resulting from the proposed regulations would be reduced or even reversed. The Department does not have data to determine if borrowers who would have been considered to have an adverse credit history in the absence of the proposed regulations have a greater incidence of default or repayment difficulty, but, if a subsidy rate were available for this subgroup of PLUS borrowers, it would likely differ from the overall PLUS subsidy rate. The budget baseline already reflects the $2,085 threshold amount as currently used in the Department's process for considering requests for reconsideration and most of the charged-off accounts or accounts in collection that would result in an adverse credit determination fall within the two-year period that would still be in effect under the proposed regulations. These factors could limit the increase in PLUS loan volume associated with the changes in the proposed regulations. Therefore, the Department has not estimated significant savings from the proposed regulations.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including the Fiscal Operations Report and Application to Participate (FISAP) from institutions; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2011–2012 National Postsecondary Student Aid Survey and the 2004/09 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the proposed regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES ($ IN MILLIONS, 7% AND 3% DISCOUNT RATES)

Category	Benefits	
Improved clarity in process for adverse credit determinations for PLUS loans	Not quantified	
Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements	$4.40	$4.43

Alternatives Considered

The Department considered various alternatives in developing these proposed regulations, including different definitions of adverse credit history for parents and graduate students, criteria regarding the borrower's ability to repay as part of the adverse credit history definition, indexing the $2,085 amount to the rate of inflation, increasing the delinquency period of 90 or more days past due, and increasing the length of time for the look-back period for debts that are in collection or charged off.

Some of the non-Federal negotiators contended that there should be different eligibility standards for PLUS loans for parents and students. These negotiators argued that graduate and professional students should be eligible for PLUS loans without application of the adverse credit history criteria.

Alternatively, one non-Federal negotiator requested that the Department consider defining ''adverse credit history'' differently for graduate and professional student PLUS loan borrowers than for parent PLUS loan borrowers.

We considered these proposals but concluded that the statutory requirement that a PLUS loan borrower not have an adverse credit history applies equally to student and parent borrowers.

Some non-Federal negotiators recommended including criteria regarding the borrower's ability to repay in the ''adverse credit history'' definition, to prevent overborrowing of PLUS loans. However, the Department determined that the HEA does not currently authorize consideration of the borrower's ability to repay in the determination of an adverse credit history.

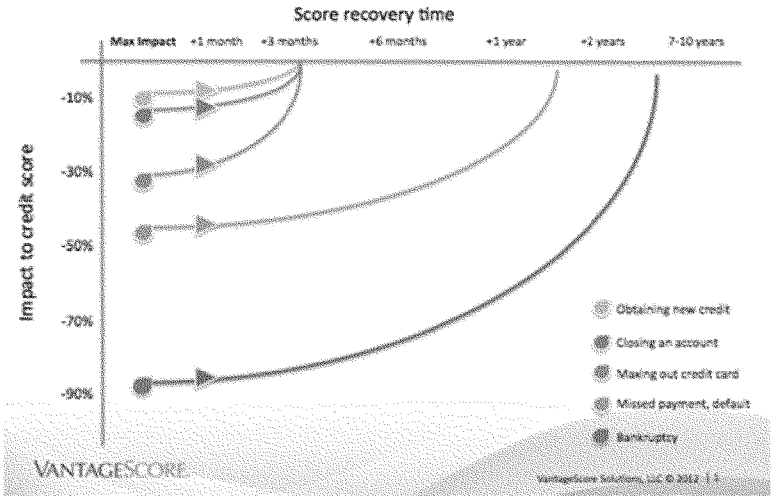
Several of the non-Federal negotiators recommended that the Department index the $2,085 debt threshold amount to the rate of inflation. The majority of these negotiators suggested that the Department use the CPI, a measure of inflation determined by the Bureau of Labor Statistics, as the basis for the indexing.

The Department considered using the CPI–U as the basis to index, but ultimately decided not to include this in the proposed regulations. Instead, the Department invites public comment on what an appropriate adjustment would be to take into account the effects of inflation, as well as suggestions for other bases for adjusting the $2,085 threshold amount over time, including measures of growth or decline in other types of consumer debt.

Some of the non-Federal negotiators argued that the proposed delinquency period of 90 or more days past due is too short for adverse credit history determinations. These negotiators recommended extending the period to 120 days or 180 days past due. They asserted that credit reports often have errors that may not be corrected during a 90-day timeframe.

In the absence of a consistent industry-wide standard, we decided to maintain the standard of 90 or more days delinquent in the proposed regulations. We rely on credit reports to determine whether an applicant is delinquent on a debt, as the number of days a debt is past due is included on an individual's credit report until an account is placed in collection. Based on our experience, most creditors send accounts to collection once they are 90 days' delinquent. Once an account is placed in collection, the number of days past due is generally not reflected on the credit report. Therefore, a standard beyond the current 90-day standard would be more difficult to track. And a borrower with a longer delinquency would still be able to request reconsideration of the PLUS loan denial under the process for determining if extenuating circumstances exist, which would allow the borrower the opportunity to explain the individual circumstances raised by the negotiators.

Non-Federal negotiators made varying proposals regarding the look-back period for debts that are in collection or charged off. Some negotiators recommended a one-year look-back period while other negotiators suggested a three-year look-back period. The Department considered these proposals but determined that it was appropriate to propose a two-year look-back period. Based on the Department's review of consumer credit standards, the age of a consumer's delinquent or defaulted debt bears significantly on a consumer's credit history. While varying substantially based on the type of credit infraction, typically most negative items have little impact after two years. Furthermore, as the chart from VantageScore shows below, a decline in a consumer's credit score from a substantially severe infraction such as a default can be remediated within about 18 months.



The Department's adverse credit history evaluation of 90-day debt delinquencies, including charge-offs and collections, is based upon an account's current status, but it does not take into account whether the debts have been delinquent for a long period of time or entered collections or were charged off years ago. Several other State student lenders, Federal agencies, and some other lenders take into account the age of the delinquent debt in question when underwriting. For example, the Maine Loan, a product offered by the Maine Educational Loan Authority, requires that applicants have no record of a paid or unpaid charge-off in the last two years.[7] Connecticut Higher Education Supplemental Loan Authority (CHESLA) loans contain a similar two-year look back for debts over 90 days delinquent as well as for charge-offs and collections.[8] At the Federal level, Department of Agriculture farm loans for operation and ownership employ a three-year look back standard.[9] Presumably, these lenders do not find that older delinquent debts impact the borrower's ability or willingness to repay a new loan.

Initial Regulatory Flexibility Analysis

The proposed regulations will affect institutions that participate in the title IV, HEA programs, including alternative certification programs not housed at institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation, with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit institutions as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The number of title IV, HEA-eligible institutions that are small entities would be limited because of the revenues involved in the sector that would be affected by the proposed regulations and the concentration of ownership of institutions by private owners or public systems. However, the definition of ''small organization'' does not factor in revenue. Accordingly, several of the entities subject to the proposed regulations are ''small entities,'' and we have prepared this Initial Regulatory Flexibility Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

The proposed regulations would update the standards for determining whether a parent or student has an adverse credit history for purposes of eligibility for a Direct PLUS Loan. The proposed regulations would require PLUS loan counseling for a parent or student with an adverse credit history who obtains a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Current Direct Loan regulations (34 CFR 685.200(b) and (c)) specify that graduate and professional students, and parents borrowing on behalf of their dependent children, may borrow PLUS loans. PLUS loan borrowers must meet applicable eligibility requirements.

Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Regulations Will Apply

The proposed regulations would affect the approximately 7,500 institutions that participate in the title IV, HEA loan programs, as the amount and composition of title IV, HEA program aid that is available to students affects students' enrollment decisions and institutional choice. Approximately 60 percent of institutions of higher education qualify as small entities. Using data from the Integrated Postsecondary Education Data System, we estimate that 4,365 institutions qualify as small entities—1,891 are nonprofit institutions, 2,196 are for-profit institutions with programs of two years or less, and 278 are for-profit institutions with four-year programs.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed regulations would not change the reporting requirements related to PLUS loans for institutions. Accordingly, the Department does not expect a change in institutional burden from the proposed regulations. However, PLUS loan borrowers with an adverse credit history who request reconsideration based on extenuating circumstances must provide satisfactory documentation that extenuating circumstances exist, and would be required to complete loan counseling offered by the Secretary.

[7] *http://www.mela.net/maine-loan.php.*

[8] *http://www.chesla.org/Customer-Content/WWW/CMS/files/071137_2011_annualreport.pdf.*

[9] *http://www.rurdev.usda.gov/SupportDocuments/CA-SFH-GRHUnderwritingGuide.pdf.*

Identification, to the Extent Practicable, of all Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described above, the Department conducted a negotiated rulemaking process to develop the proposed regulations and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Section 685.200 contains information collection requirements. Under the PRA, the Department has submitted a copy of the section, and will submit the Information Collections Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations. The burden associated with the new regulatory provisions would be accounted for in a new information collection.

The current regulations allow PLUS loan applicants who have been denied a PLUS loan due to an adverse credit history determination to submit documentation of extenuating circumstances to the Secretary and request reconsideration of the loan application. The proposed regulations would require that a PLUS loan applicant who is determined to be eligible for a PLUS loan after reconsideration complete loan counseling offered by the Secretary.

Section 685.200 Borrower Eligibility

Requirements: Under proposed regulations in § 685.200(b)(5) and (c)(2)(viii)(A)(*3*), we have proposed that, in addition to providing documentation to the Secretary demonstrating that extenuating circumstances exist, an applicant who is determined to have an adverse credit history would also have to complete PLUS loan counseling to receive the PLUS loan. We believe loan counseling would help these PLUS loan applicants to understand the ramifications of incurring this additional debt.

Burden Calculation: We estimate that during the 2013–14 award year there were 785,734 PLUS loan denials. Our records indicate that, of those PLUS loan denials, 147,400 PLUS loans were approved after reconsideration based on extenuating circumstances. While the total number of requests for reconsideration (whether approved or disapproved) is not available at this time, we estimate that the total number of approved requests, divided by 90 percent, approximates the total number. We estimate that, on average, each borrower's submission of documentation for the Secretary's consideration would take 1 hour per submission.

Our 2013–14 data show that there were 8,452 requests from graduate or professional students at private for-profit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 8,452 hours (7,607 approved reconsideration requests, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 23,804 requests from graduate or professional students at private nonprofit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 23,804 hours (21,424 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 14,056 requests from graduate or professional students for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 14,056 hours (12,650 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 1,672 requests from graduate or professional students at foreign institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 1,672 hours (1,505 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(b)(5) would be 47,984 hours under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 8,458 submissions from parents of students at private for-profit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 8,458 hours (7,612 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 43,008 submissions from the parents of students at private nonprofit institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 43,008 hours (38,707 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 64,118 requests from parents of students at public institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 64,118 hours (57,706 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 210 requests from parents of students at foreign institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 210 hours

(189 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(c)(2)(viii)(A)(*3*) would be 115,794 hours under OMB Control Number 1845–NEW1.

We estimate the burden associated with the loan counseling requirement under proposed § 685.200(c)(2)(viii)(A)(*3*). All graduate and professional students are currently required to undergo PLUS loan entrance counseling. We estimate that the additional loan counseling requirements for graduate and professional students who qualify for PLUS loans under extenuating circumstances would, on average, increase loan counseling by 0.17 hours (10 minutes) for each graduate or professional PLUS loan applicant who qualifies for a PLUS loan due to extenuating circumstances.

Our 2013–14 data show that there were 7,607 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at private for-profit institutions; therefore, we estimate the burden would increase by 1,293 hours (7,607 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Under proposed § 685.200(b)(5), our 2013–14 data show that there were 21,424 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at private nonprofit institutions; therefore, we estimate the burden would increase by 3,642 hours (21,424 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 12,650 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at public institutions; therefore, we estimate the burden would increase by 2,151 hours (12,650 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 1,505 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at foreign institutions; therefore, we estimate the burden would increase by 256 hours (1,505 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(b)(5) would be 7,342 hours under OMB Control Number 1845–NEW1.

Under the proposed regulations, there would be a new requirement that a parent PLUS loan applicant who is determined to be eligible for a loan based on extenuating circumstances would need to participate in loan counseling before receiving a loan. Therefore, we estimate that, on average, each parent PLUS loan borrower who is determined to be eligible on the basis of extenuating circumstances would take 45 minutes to complete a PLUS loan counseling session.

Our 2013–14 data show that there were 7,612 approved requests for reconsideration from parents of students at private for-profit institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 5,709 hours (7,612 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 38,707 approved requests for reconsideration from the parents of students at private nonprofit institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 29,030 hours (38,707 approved requests for reconsideration times 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 57,706 approved requests for reconsideration from parents of students at public institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 43,280 hours (57,706 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 189 approved requests for reconsideration from parents of students at foreign institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 142 hours (189 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(c)(2)(viii)(A)(*3*) would be 78,161 hours under OMB Control Number 1845–NEW1.

Overall, burden would increase by 249,281 hours under OMB Control Number 1845–NEW1.

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 that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on applicants and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $4,063,280, as shown in the chart below. This cost was based on an hourly rate of $16.30 for applicants and borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated burden [change in burden]	Estimated costs
§ *685.200 (b)(5) and 685.200* (c)(1) (viii)(A)(3) *Borrower Eligibility.*	Revises language requiring documentation for extenuating circumstances and augments PLUS loan counseling for graduate and professional students to increase student financial literacy. The proposed regulations also require parent PLUS loan counseling.	OMB 1845–NEW1. We estimate that the burden would increase by 249,281 hours.	$4,063,280

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 U.S. Department of

Education, by fax to (202) 395–6974 or send your comments by email to *OIRA_DOCKET@omb.eop.gov.* You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for this collection. In preparing your comments you may want to review the ICR, which is available at *www.reginfo.gov.* On *www.reginfo.gov,* click on ''Information Collection Review.'' This proposed collection is identified as proposed collection 1845–NEW1.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is 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 collection, 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.

OMB is required to make a decision concerning the collection 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 your comments by September 8, 2014. 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

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 685

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

Dated: August 4, 2014.

Arne Duncan

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 685 of title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 2. Section 685.200 is amended by:

■ a. In paragraph (b)(5), removing the words ''of paragraph (c)(1)(vii)'' and adding, in their place, the words ''that apply to a parent under paragraphs (c)(2)(viii)(A) through (D)''; and

■ b. Revising paragraph (c) to read as follows:

§ 685.200 Borrower eligibility.

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(c) *Parent PLUS borrower*—(1) *Definitions.* The following definitions apply to this paragraph (c):

(i) *Charged off* means a debt that a creditor has written off as a loss, but that is still subject to collection action.

(ii) *In collection* means a debt that has been placed with a collection agency by a creditor or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

(2) *Eligibility.* A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii) The parent has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(viii)(A) The parent—

(*1*) Does not have an adverse credit history;

(*2*) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(*3*) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist and completes PLUS loan counseling offered by the Secretary.

(B) For purposes of this paragraph (c), an adverse credit history means that the parent—

(*1*) Has one or more debts with a total combined outstanding balance greater than $2,085, as may be adjusted over time on a basis determined by the Secretary, that are 90 or more days delinquent as of the date of the credit report, or that have been placed in

collection or charged off, as defined in paragraph (c)(1) of this section, during the two years preceding the date of the credit report; or

(*2*) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) For purposes of this paragraph (c), the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(D) For purposes of this paragraph (c), the Secretary may determine that extenuating circumstances exist based on documentation that may include, but is not limited to—

(*1*) An updated credit report for the parent; or

(*2*) A statement from the creditor that the parent has repaid or made satisfactory arrangements to repay a debt that was considered in determining that the parent has an adverse credit history.

(*3*) For purposes of paragraph (c)(2) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

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