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Part IV

Department of Education

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

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1845–AA12

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

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of proposed rulemaking

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Perkins (Perkins) Loan Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations in order to strengthen and improve the processes for granting loan discharges based on a borrower's death or total and permanent disability.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Mr. Brian Smith or Mr. Jon Utz, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: DISABILITYNPRM@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL and Perkins Loan Programs, Mr. Brian Smith, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building ı3, Washington, DC 20202–5345. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service, (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

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

Under § 482(c) of the Higher Education Act of 1965, as amended (HEA), final regulations published before November 1 are generally effective on July 1 of the following year. We realize, however, that implementation of these proposed regulations might require significant operational changes for lenders, guaranty agencies, schools, and the Department. Therefore, we invite your comments on whether a later effective date should be considered for these regulations.

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

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

Background

In the Perkins Loan, FFEL, and Direct Loan programs, a borrower's obligation to repay a loan is discharged if the borrower dies or becomes totally and permanently disabled. In all three programs current regulations define a ''total and permanent disability'' as a medical impairment that (1) prevents an individual from working and earning money or attending school, and (2) is expected to continue indefinitely or result in death.

In June 1999, the Department of Education's Inspector General (IG) issued a report on the process of granting loan discharges in the FFEL Program due to death or total and permanent disability. The report, ''Improving the Process for Forgiving Student Loans'' (audit control number 06–80001), is available in Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/offices/OIG/Areports.htm The IG identified the borrowers who received death or disability discharges on FFEL Program loans from July 1, 1994 through December 31, 1996, and matched the list against the Social Security Administration's master earnings record. The IG found that 23 percent of borrowers who received total and permanent disability discharges and two percent of borrowers who received death discharges during the period covered by the report earned wages, in some cases in excess of $30,000 per year, after their loans were discharged. The IG also found that a significant number of borrowers whose loans had been discharged based on a total and permanent disability returned to school and received new loans within one year after having the previous loan discharged.

The IG concluded that inappropriate discharges were being granted because of weaknesses in the current procedures for determining eligibility for discharge. Although the IG looked only at discharges in the FFEL Program, current regulations in the Perkins Loan and Direct Loan programs are essentially the same as the FFEL regulations. In response to the IG's findings, we are proposing regulatory changes that would strengthen the current processes for approving discharges based on death or total and permanent disability.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants

in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM were discussed with Negotiating Committee I (the committee), which was made up of the following members:

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
- American Council on Education
- Career College Association
- Coalition of Higher Education Assistance Organizations
- Consumer Bankers Association
- Education Finance Council
- Education Loan Management Resources
- Legal Services
- National Association of College and University Business Officers
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Association of Student Loan Administrators
- National Council of Higher Education Loan Programs
- National Direct Student Loan Coalition
- Sallie Mae, Inc.
- Student Loan Servicing Alliance
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was not reached on the proposed regulations in this document.

During the negotiations, we proposed a conditional approach to granting loan discharges based on total and permanent disability. As reflected in these proposed regulations, a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. A final discharge would be granted only if the borrower continues to meet the discharge eligibility requirements over the three-year conditional discharge period.

We believe that the conditional discharge approach proposed in these regulations is the proper response to the IG's findings. The IG's report indicates that the current approach of granting total and permanent disability discharges based on a physician's one-time certification of a borrower's condition has resulted in a significant number of inappropriate discharges being granted to borrowers who, although previously certified as totally and permanently disabled, subsequently had substantial earnings from work. The proposed conditional approach would allow for a more accurate assessment of a borrower's condition by monitoring the borrower's income over an extended period after the onset of the disabling condition. If a borrower had significant earnings from wages during the conditional discharge period, we believe it would be reasonable to conclude that the borrower was not totally and permanently disabled as we define that term in our regulations. The conditional discharge approach acknowledges that, as a result of advances in medicine and rehabilitative technologies, many individuals with conditions that once would have been totally and permanently disabling are now able to return to work. Moreover, the conditional discharge approach is consistent with other major government programs that provide disability benefits. We are not aware of any other major Federal program that provides disability-related benefits based on a one-time review of an individual's condition.

The non-Federal negotiators generally opposed our proposed approach for granting disability discharges. They felt that our proposal to place loans in a conditional discharge status would be unfair to borrowers, and that the conditional discharge approach would be complicated, confusing, and difficult to administer. The non-Federal negotiators believed that other steps should be taken to address the concerns raised by the IG's report, rather than significantly changing the process for granting total and permanent disability discharges. Several of the non-Federal negotiators pointed out that the IG's report had already increased awareness of the problem in the financial aid industry. Some of the non-Federal negotiators referred to a separate pilot program initiated by the Department to address some aspects of the deficiencies identified in the report. Some of the non-Federal negotiators recommended that we make further revisions to the disability discharge request form, in addition to changes that we already made in response to the IG's report. These negotiators expressed the view that a more comprehensive form might make it easier for a physician to determine whether a patient meets the criteria for a total and permanent disability discharge, and would enhance the ability of loan holders to review physician's certifications.

During the negotiations the non-Federal negotiators offered an alternative proposal. Under this proposal, the initial process for granting total and permanent disability discharges would remain substantially unchanged from current practice. However, if a borrower who had received a discharge worked and earned money over a certain income threshold, or took out another title IV loan within two years of receiving a discharge, the Secretary would revoke the discharge.

It is the position of the non-Federal negotiators that most loans discharged are for borrowers who are totally and permanently disabled in accordance with the regulations. The non-Federal negotiators stated that their alternative proposal would allow us to address the concerns raised by the IG's report by focusing directly on cases of potentially erroneous discharges, thus preventing unnecessary confusion and anxiety for all affected borrowers.

We understand the non-Federal negotiators' concerns about the

proposed conditional discharge approach. However, in light of the IG's findings, we are convinced that significant changes to the current procedures for granting discharges based on total and permanent disability are necessary. We believe that the conditional discharge approach proposed in these regulations would be the most fair method to discharge a borrower's loans, and would best protect the interests of taxpayers.

Some non-Federal negotiators also objected to our original proposal to require that a request for a loan discharge based on the death of the borrower (or student in the case of a PLUS loan) be supported by a certified or original copy of a death certificate. They felt that requiring a certified copy or original of a death certificate was not necessary in every case. Many of the negotiators proposed that the loan holder and guaranty agency be authorized to accept alternative documentation in certain circumstances.

We have decided to accept this proposal, in part. These draft regulations would authorize the chief executive officer of the guaranty agency (for FFEL loans) or the chief financial officer of the institution (for Perkins loans) to grant a discharge based on other evidence in exceptional circumstances.

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.

Sections 674.61, 682.402, and 685.212 Death Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for a discharge of a borrower's FFEL or Direct Loan program loan if the borrower, or the student for whom a parent takes out a PLUS loan, dies. Section 464(c)(1)(F) of the HEA provides for the cancellation of a borrower's Perkins loan if the borrower dies.

Current Regulations: The current Perkins Loan and FFEL Program regulations require a death certificate or other proof of death acceptable under State law in order to discharge a loan based on death. The FFEL Program regulations further provide that if a death certificate or other proof of death under State law is not available, a guaranty agency may discharge the loan based on other evidence establishing that the borrower has died.

The current Direct Loan Program regulations require acceptable documentation of a borrower's death. In practice, acceptable documentation for this purpose is the same types of documentation that are required in the FFEL Program.

Proposed Regulations: The proposed Perkins Loan and FFEL Program regulations would (1) require that the death certificate must be an original or certified copy, and (2) specify that other documentation of death may be used to support a discharge only under exceptional circumstances and only with the approval of the chief executive officer of the guaranty agency (for the FFEL Program) or the institution's chief financial officer (for the Perkins Loan Program).

The proposed Direct Loan Program regulations would (1) specify that an original or certified copy of the death certificate is required, and (2) provide for loan discharge based on other documentation of death only with the Secretary's approval.

Reasons: The proposed regulations address concerns raised in the IG's report. Specifically, the IG found that two percent of borrowers whose loans were discharged due to death during the period covered by the report had earnings from wages after the date of discharge. In reviewing a random sample of death certificates that were used as the basis for loan discharge, the IG found documents that had been typed, except for the deceased's name, which was hand-written. In one case, a guaranty agency reported receiving a death certificate that had been altered by changing the name and social security number of the deceased individual.

We believe that requiring an original or certified copy of the death certificate would help to ensure that death discharges are based on valid documentation. We also believe that this practice would be consistent with the evidence required by insurance companies and other government programs. However, we recognize that, in rare cases, an original or certified copy of the death certificate may not be available. The non-Federal negotiators representing guaranty agencies strongly urged us to permit the use of alternative documentation in some circumstances and to allow the decision to rest with the agency. We have decided to accept this proposal. However, the proposed regulations would limit the conditions under which other documentation may serve as the basis for discharge by requiring a senior official of the agency or school to approve the use of any alternative documentation.

This exception to the general requirement that an original or certified copy of a death certificate be obtained is intended to ensure that alternative documentation of death would be used only rarely, in exceptional circumstances. We expect guaranty agencies and schools to maintain separate records of their use of this exception and to make those records available to us upon request.

Sections 674.51, 682.200, and 685.102 Definitions.

Current Regulations: The current definition of ''totally and permanently disabled'' provides that an individual must be unable to work and earn money or attend school because of the disabling condition.

Proposed Regulations: The proposed regulations would remove the requirement that an individual be unable to attend school from the definition of ''total and permanent disability.''

Reasons: We believe that with the development of new technologies to aid disabled individuals and the increased availability of distance learning, it is no longer meaningful to use ability to attend school as a measure of whether an individual is totally and permanently disabled. Moreover, we have determined that our current definition of totally and permanently disabled could have the unintended consequence of discouraging disabled individuals from pursuing further education or retraining. Accordingly, we are proposing to remove the requirement that an individual be unable to attend school from the definition of a ''total and permanent disability.''

Sections 674.61, 682.402, 685.212, and 685.213 Total and Permanent Disability Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for discharging a borrower's FFEL or Direct Loan program loan if the borrower becomes permanently and totally disabled. Section 464(c)(1)(F) of the HEA similarly provides for canceling a borrower's Perkins loan if the borrower becomes permanently and totally disabled. In all three programs, permanent and total disability must be determined in accordance with regulations of the Secretary.

Current Regulations: Under current regulations, schools (for Perkins loans), guaranty agencies (for FFEL loans), or the Secretary (for all Direct Loans, and any Perkins or FFEL loans held by the Secretary) discharge title IV loans after determining that a borrower meets the criteria for a total and permanent

disability discharge. Traditionally, in granting these discharges, the Secretary, schools, and guaranty agencies have primarily relied on a physician's certification to make that determination. The FFEL and Direct Loan program regulations define a ''total and permanent disability'' as ''the condition of an individual who is unable to attend school because of an injury or illness that is expected to continue indefinitely or result in death.'' In the Perkins Loan Program the definition is ''the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.''

If a borrower sends payments to the loan holder after it has discharged the loan the loan holder returns those payments to the borrower, with a notification that the loan has been discharged and that any further payments are unnecessary.

Under the current regulations, a borrower whose title IV loan has been discharged due to a disability may receive another title IV loan only if a physician certifies that the borrower now can engage in substantial gainful activity. The borrower must also acknowledge that any additional loans that are received cannot be discharged due to the same disability, unless the disability substantially deteriorates.

Proposed Regulations: Under the proposed regulations, a borrower would apply to the loan holder for a disability discharge. Approval of a request for a disability discharge would be based on either a physician's certification or documentation from the Social Security Administration that supports the conclusion that the borrower's condition meets our requirements. If the loan holder (and guaranty agency, for FFEL loans) approves the request, the loan would be assigned to us. We would review the documentation that is submitted. If we denied the request for a discharge, we would continue to hold the loan and resume collection activity. If we approved the request for a discharge, the borrower would receive a conditional discharge of the loan. During the conditional discharge period, which would last for up to three years, the borrower would not be required to make payments on the loan. At the end of the conditional discharge period we would make a final determination of eligibility for a disability discharge. If, during the conditional discharge period, the borrower's annual earnings from work are below the poverty line for a family of two, and the borrower does not receive any additional title IV loans, we would grant a final discharge of the loan. At that time, we would return any payments made on the loan after the onset of the disabling condition.

Sections 674.61(b)(3)(ii), 682.402(c)(2)(ii), and 685.213(b)(2) Use of Social Security Administration Disability Documentation

Proposed Regulations: Under the proposed regulations a borrower could submit, in lieu of the physician's certification, documentation from the Social Security Administration (SSA) that supports the borrower's claim of total and permanent disability. Documentation from the SSA must establish that the borrower is totally and permanently disabled as defined in these proposed regulations. We are also proposing that documentation from the SSA could be used when a borrower, in order to qualify for additional title IV loan funds, needs to document that the borrower's medical condition has improved to the extent that the borrower is capable of substantial gainful activity.

Reasons: Individuals who are eligible to receive disability benefits from the SSA have already gone through an extensive medical review process. For this reason, we are proposing regulations that would permit a borrower who is eligible for SSA disability benefits to receive a disability discharge without obtaining an additional certification from a physician, if the borrower can provide comparable documentation from the SSA establishing that he or she is totally and permanently disabled. Similarly, in the case of a borrower who wishes to receive a title IV loan after having had a previous loan discharged (or conditionally discharged) due to a total and permanent disability, the proposed regulations would not require an additional physician's certification if the borrower provides documentation from the SSA showing that the borrower is able to engage in substantial gainful activity.

The standard that an individual must meet to qualify for SSA disability benefits is not the same as the total and permanent disability standard in the proposed regulations. Some individuals who are eligible to receive SSA disability benefits would not be considered totally and permanently disabled according to our regulatory definition. Therefore, we do not believe that it would be appropriate to accept SSA documentation as an alternative to a physician's certification in all cases.

We are working with the SSA to determine if there is specific documentation that the SSA provides to some individuals that would be comparable to a physician's certification that a borrower is totally and permanently disabled as defined in our regulations. If we determine that the SSA provides such documentation to some borrowers, we will provide guidance on the specific documentation that a borrower would have to provide.

We welcome your comments on the feasibility of using documentation of eligibility for SSA disability benefits, in some cases, as an alternative to a physician's certification of total and permanent disability. We are especially interested in comments on how the use of SSA documentation might affect administrative burden, borrower understanding of the discharge eligibility requirements, and program integrity.

Sections 674.61(b)(3)–(6), 682.402(c)(2)–(12), and 685.213(b) Initial Determination of Total and Permanent Disability

Proposed Regulations: As noted earlier, the proposed regulations would modify the current regulations and establish a new process for evaluating disability discharge applications. Under the proposed regulations, a FFEL or Perkins loan borrower would initiate the discharge application process by submitting a discharge application to the loan holder. If the loan holder, based on a review of the application, determines that the borrower met the requirements for a disability discharge, the loan would be assigned to the Department. We would notify the borrower that we would be reviewing the application and assorted documentation. We would also continue to review disability discharge applications submitted by Direct Loan borrowers. In all three loan programs, we could ask the borrower to provide additional documentation to support the request for discharge.

Under the proposed regulations, if we determine that a borrower meets the eligibility criteria for a conditional disability discharge, we would place the loan into a conditional discharge status for up to three years.

If we determine that the borrower does not qualify for a total and permanent disability discharge, we would notify the borrower that we had denied the request and that we would resume collection activity on the loan.

Reasons: Under the proposed regulations, we would determine whether a borrower meets the eligibility criteria for a total and permanent disability discharge. During the negotiated rulemaking sessions, some negotiators for FFEL loan holders, Perkins Loan schools, and guaranty agencies indicated that they did not believe that they could properly

evaluate disability discharge applications. They felt that they had neither the staff, the resources, nor the expertise to thoroughly review or question a physician's certification of a borrower's disability. The IG found that, in some cases, disability discharges were approved based on an insufficient review of medical documentation. Disability discharges were granted based on physicians' diagnoses that were illegible, or for impairments that clearly were neither ''permanent'' nor ''total.'' The proposed regulations would require the loan holder (or guaranty agency) to thoroughly review the documentation provided by a borrower requesting a discharge due to a total and permanent disability. However, we would assume the responsibility for making the ultimate decision as to whether to grant the discharge. We believe that this proposed process will help ensure that conditional and final disability discharges are granted based on adequate medical documentation, and that there is a consistent application of the standards for granting those discharges.

Sections 674.61(b)(1), (6), and (7), 682.402(c)(1), (12), and (13), and 685.213(a)(1) and (d) Conditional Discharge

Proposed Regulations: Under the proposed regulations, if we make a conditional determination that a borrower is totally and permanently disabled, we would place the borrower's loan in a conditional discharge status for a period of up to three years from the date of the onset of the disabling condition. We would not require the borrower to make payments on the loan.

If, at the end of the conditional discharge period, the borrower still meets the discharge eligibility requirements, we would make a final determination of eligibility for a total and permanent disability discharge. We would discharge the loan, including any accrued interest, and we would return any payments made on the loan after the onset of the disability.

If the borrower ceased to meet the discharge eligibility requirements during or at the end of the conditional discharge period, we would cancel the conditional discharge, and collection activity would resume on the loan. The borrower would not be required to repay any interest that accrued on the loan during the period when collection activity was suspended.

Reasons: The definition of ''totally and permanently disabled'' states, in part, that a borrower must be unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death. However, the IG found that a significant number of borrowers who received a total and permanent disability discharge earned wages after their loans were discharged. We believe it is reasonable to conclude that a borrower is not totally and permanently disabled if there is evidence that the borrower has received income from wages in excess of a very modest amount. Under the conditional discharge approach proposed in these regulations, we would monitor a borrower's income—as an indicator of whether the borrower is working—over an extended period of time. We believe that this approach addresses the concerns raised in the IG's report by providing for a more accurate assessment of whether a borrower is totally and permanently disabled than the ''snapshot'' approach in the current regulations.

To minimize the administrative burden, and allow for final determinations of discharge eligibility in a reasonable period of time, we are proposing a conditional discharge period of up to three years. We are especially interested in receiving comments on whether that conditional discharge period is an appropriate length of time.

Sections 674.61(b)(2),(8), and (9), 682.402(c)(14) and (15), and 685.213(a)(2) and (c) Final Determination of Total and Permanent Disability

Proposed Regulations: These proposed regulations would describe the basis for the decision as to whether to grant a final disability discharge. Under the proposed regulations, the loan would generally be discharged if, during the conditional discharge period, the borrower's income from employment did not exceed the poverty line for a family of two for any 12-month period, and the borrower did not take out any additional title IV loans. If the borrower did earn income from employment above this threshold or did take out additional loans or was otherwise determined not to be totally and permanently disabled, we would not grant the final discharge.

A borrower could not apply for a total and permanent disability discharge on a loan that has gone back into active collection status after being conditionally discharged, unless the borrower's medical condition substantially deteriorated.

Reasons: Under the proposed regulations, a borrower whose loan is in a conditional discharge status would lose eligibility for a final discharge if the borrower's earnings from work exceeded the poverty line for a family of two for any 12-month period. The poverty guidelines are updated annually in the **Federal Register** by the U.S. Department of Health and Human Services (HHS) and are a reliable indicator of current economic conditions that can be used as a measure of minimal earnings. The poverty guidelines are posted on HHS' web site at the following address: http://aspe.hhs.gov/poverty/poverty.htm

The IG found that some borrowers who had received disability discharges were earning substantial wages after the discharge, in some cases over $30,000 a year. We do not believe that a borrower who has worked consistently for a significant period of time, as indicated by earnings above the poverty line, is totally and permanently disabled in accordance with our regulations.

On the other hand, we also believe that terminating a conditional discharge if the borrower had any earnings at all from work during the three-year conditional discharge period could have the undesirable effect of discouraging disabled borrowers from attempting to overcome their disabilities. A disabled borrower might be able to generate modest earnings from work, but find those earnings wiped out if the conditional discharge was immediately cancelled as a result. Therefore, the proposed regulations would not penalize a borrower who has minimal earnings from work. However, a borrower who is clearly capable of engaging in substantial gainful activity (as indicated by earnings in excess of the poverty line) would lose eligibility for the total and permanent disability discharge because, by definition, he or she would not be totally and permanently disabled.

Under the proposed regulations, if a borrower seeks another title IV loan during the conditional discharge period, we would cancel the conditional discharge before the borrower could receive an additional title IV loan. To receive another title IV loan, a borrower who has had a prior loan discharged (or conditionally discharged) due to a total and permanent disability must provide a certification, from a physician or from the SSA, that the borrower can engage in substantial gainful activity. By definition, a borrower who is totally and permanently disabled must be unable to work and earn money. In our view, a borrower no longer meets the eligibility requirements for a total and permanent disability if a physician or the SSA has certified that the borrower is capable of substantial gainful activity. Therefore, the borrower should remain obligated to

repay the loan for which the discharge was previously sought.

Sections 674.61(b)(11) and (12), 682.402(r)(2) and (3), 685.212(g)(2) Payments Received After the Onset of the Disabling Condition

Proposed Regulations: Under the proposed regulations, any payments sent to an institution (on a Perkins Loan) or a lender or guaranty agency (on an FFEL loan) by or on behalf of a borrower whose loan has been assigned to us after the borrower has applied for a disability discharge must be forwarded to us. If those payments are made on a loan that we have placed in a conditional discharge status, the payments will be applied to the loan. Similarly, we will apply any payments we receive for a Direct Loan that we have conditionally discharged to that loan. If we discharge the loan at the end of the conditional discharge period, we will return to the sender payments we received after the date of the onset of the disability.

Reasons: Once a loan is assigned to us, the prior holder of the loan may not know the loan's current status. We could still be in the process of determining if the borrower meets the eligibility requirements for a conditional discharge, the loan could be in the conditional discharge status, or a final determination could have been made and the loan already discharged. While a discharge application is pending or a loan is in a conditional discharge period, a final determination of eligibility for a total and permanent disability discharge has not been made. Until we have made a final determination that a borrower qualifies for a total and permanent disability discharge, any payments made on a loan should be applied to the loan. If it turns out that the borrower was not eligible for a final discharge of the loan, the payments would have reduced the outstanding balance due at the time of that determination. If, on the other hand, the loan is discharged at the end of the conditional discharge period, all payments received after the onset of the disability will be returned to the sender.

Sections 674.9, 682.201 and 685.200 Eligibility for Title IV Loans

Current Regulations: The current regulations state that a borrower who has received a discharge of a previous title IV loan based on total and permanent disability may receive another title IV loan only if a physician certifies that the borrower can now engage in substantial gainful activity. In addition, the borrower must sign a statement acknowledging that the new title IV loan cannot be discharged in the future based on any current impairment, unless that impairment substantially deteriorates.

Proposed regulations: The proposed regulations would establish similar eligibility requirements for a borrower who seeks a title IV loan while a previous title IV loan is in a conditional discharge period. Under the proposed regulations, in this situation, the borrower would be eligible to receive another title IV loan only if (1) a physician or the SSA certifies that the borrower is able to engage in substantial gainful activity, (2) the borrower acknowledges that neither the conditionally discharged loan nor the new loan could be discharged on the basis of a pre-existing impairment (unless the impairment substantially deteriorates), and (3) collection activity resumes on the conditionally discharged loan.

Reasons: The proposed requirements for the physician's (or SSA's) certification and borrower's acknowledgement would ensure that a borrower whose previous loan was approved for a conditional discharge or was permanently discharged is potentially capable of repaying the new loan before receiving that new title IV loan. When the borrower receives the new loan, he or she promises to repay the loan. We do not believe it is appropriate to provide a new loan to a borrower who has no prospect of repaying the loan. These students should request other financial aid that does not require repayment.

The proposed regulations would also prevent a borrower from obtaining a new loan and later having that loan discharged based on a medical condition that the borrower used as the basis for an earlier conditional or permanent discharge. The proposed regulations would allow the certification to be provided by either a physician or the SSA, as in the case with the documentation required for a conditional determination of total and permanent disability.

Under the proposed regulations, a conditional discharge on a borrower's prior loan must be cancelled and collection activity resume on the loan before a borrower may receive an additional loan during the conditional discharge period. This requirement reflects the fact that a borrower who has been certified as capable of substantial gainful activity no longer meets the eligibility requirements for a total and permanent disability discharge.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

These proposed regulations implement new procedures for borrowers who apply for loan discharges due to death or total and permanent disability. As more fully described elsewhere in this preamble, under these regulations a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. The Department of Education has estimated that the proposed regulations would result in $72 million in Federal savings over FY 2001–2005 as a result of borrowers who previously would have received a discharge losing eligibility during the three-year conditional period.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, *§ 682.201 Eligible Borrowers*).
- Could the description of the proposed regulations in the

SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

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

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs, and individual loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as ''small entities.'' Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Act. Individuals are not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL program meet the definition of ''small entities.'' While these lenders and a number of institutions of higher education fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 674.9(h), 674.9(i), 674.61(a), 674.61(b), 682.201(a), 682.402(b), 682.402(c), 685.200(a), 685.212(a), 685.212(b), and 685.213(b) contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.9, 682.201, and 685.200—Borrower Eligibility

We are proposing changes in the requirements for a borrower to re-establish eligibility for title IV loans after receiving a disability discharge. Under the proposed regulations, a borrower has the additional option of submitting a statement from the SSA certifying that the borrower can engage in substantial gainful activity. This change gives the borrower more flexibility in re-establishing eligibility for title IV loans, and produces no additional burden.

Under the proposed regulations, before a borrower receives another title IV loan, a conditional discharge on any prior loan must be cancelled and that loan placed in an active collection status. As a condition for receiving an additional title IV loan, the borrower must also sign a statement acknowledging that any new loan, or a loan for which a conditional or permanent discharge was previously granted, may not be discharged in the future on the basis of the same, pre-existing medical condition unless the borrower's medical condition substantially deteriorates.

Borrowers are already required, under current regulations, to sign such a statement to regain eligibility for an additional title IV loan after receiving a total and permanent disability discharge. This change does not alter the burden to borrowers.

Sections 674.61, 682.402, 685.212—Loan Discharge Due to Death

Guaranty agencies currently have the authority to discharge loans based on alternative documentation if a copy of the death certificate is unavailable. The proposed regulations maintain that requirement, but specify that the chief executive officer of the guaranty agency must make the decision to exercise that authority and limits the authority to exceptional circumstances. This change does not increase the burden on guaranty agencies.

Currently, schools in the Perkins Loan Program must base their death cancellations on a death certificate or other evidence acceptable under state law. By allowing only the chief financial officer of the institution to grant total and permanent disability cancellations based on alternative evidence of death, the burden on the schools is not changed.

Sections 674.61, 682.402, 685.212, 695.213—Loan Discharge Due to Disability

The proposed regulations do not alter the process for loan holders and guaranty agencies in the FFEL and Perkins programs to review requests for a discharge of a loan based on a total and permanent disability. The only difference under the proposed process is that the loan holder and guaranty agency will make a preliminary determination of eligibility for the discharge. After making that determination, the guaranty agency or other loan holder assigns the loan to us, and we decide whether to discharge the loan. This change does not increase the burden on loan holders or guaranty agencies.

In the Direct Loan Program, we will continue to make determinations of eligibility for total and permanent disability discharges.

In addition, the proposed regulations allow borrowers to qualify for a conditional discharge of their title IV loans by providing a certification of eligibility for disability benefits from the SSA. This allows borrowers increased flexibility in applying for the discharge, and does not increase burden.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

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

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30

days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

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http://www.access.gpo.gov/nara/index.html
(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

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

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

Dated: July 26, 2000.

Richard W. Riley,

Secretary of Education.

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

2. Section 674.9 is amended by:

A. Revising paragraph (h)(1).

B. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l).

C. Adding a new paragraph (i).

D. Adding a new paragraph (j).

The additions and revisions read as follows:

§ 674.9 Student eligibility.

* * * * *

(h)(1) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to total and permanent disability, obtains a certification from a physician or from the Social Security Administration that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

* * * * *

(i) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(1) Comply with the requirements of paragraph (h) of this section; and

(2) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

(j) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period described in §§ 674.61(b), 682.402(c), or 685.212(b), the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

* * * * *

3. Section 674.51 is amended by adding a new paragraph (s) to read as follows:

§ 674.51 Special definitions.

* * * * *

(s) *Total and permanent disability:* The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

4. Section 674.61 is amended by:

A. Revising the section heading.

B. Revising paragraph (a).

C. Revising paragraph (b).

§ 674.61 Discharge for death or disability.

(a) *Death.* An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon reliable documentation other than a death certificate that supports the discharge request.

(b) *Total and permanent disability.* (1) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in § 674.51(s), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the three-year conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability as certified under § 674.61(b)(3) are returned to the sender.

(2) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period described in paragraph (b)(1) of this section—

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

(ii) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

(3) If a borrower becomes totally and permanently disabled after receiving a Defense, NDSL, or Perkins loan, the institution shall, pursuant to § 674.50, assign the loan to the Secretary if—

(i) The borrower submits a certification by a physician and the institution reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s); or

(ii) The borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support the

conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s).

(4) At the time the loan is assigned to the Secretary the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

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

(6) If the Secretary makes a conditional determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years after the onset of the disability as certified under § 674.61(b)(3).

(7) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered past due or in default on the loan;

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

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(i) of this section; and

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

(8) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in paragraph (b)(2) of this section, the balance of the loan is discharged.

(9) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (b)(6) of this section through the end of the conditional discharge period.

(10) The notification to the borrower described in paragraph (b)(6) of this section identifies the conditions of the conditional discharge period specified in paragraphs (b)(6) through (9) of this section.

(11) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(12) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM—

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

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

6. In § 682.200(b) the definition of ''Totally and permanently disabled'' is revised to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Totally and permanently disabled. The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

* * * * *

7. Section 682.201 is amended by:

A. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(8), and (a)(9).

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

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

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

§ 682.201 Eligible borrowers.

(a) * * *

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled under § 682.402(c).

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(7) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(i) Comply with the requirements of paragraph (a)(6) of this section; and

(ii) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

* * * * *

8. Section 682.402 is amended by:

A. Revising paragraph (b)(2).

B. Revising paragraph (b)(3).

C. Revising paragraph (c)(1)(i).

D. Redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(iii) and (c)(1)(iv), respectively.

E. Adding a new paragraph (c)(1)(ii).

F. Amending redesignated paragraph (c)(1)(iii) by removing the reference to paragraph ''(c)(1)(iii)(A)'' and adding, in its place, ''(c)(1)(iv)(A)''.

G. Amending redesignated paragraph (c)(1)(iv)(A) by removing the reference to paragraphs ''(c)(1)(i) and (ii)'' and adding, in its place, ''(c)(1)(i) through (iii)''.

H. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraph ''(c)(1)(iii)(A)'' and adding, in its place, ''(c)(1)(iv)(A)''.

I. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraphs ''(c)(1)(i) and (ii)'' and adding, in its place, ''(c)(1)(i) through (iii)''.

J. Amending redesignated paragraph (c)(1)(iv)(C) by removing the reference to paragraph ''(c)(1)(iii)(A)'' and adding, in its place, ''(c)(1)(iv)(A)''.

K. Revising paragraph (c)(2).

L. Revising paragraph (c)(3).

M. Redesignating paragraph (c)(4) as paragraph (c)(5).

N. Adding a new paragraph (c)(4).

O. Revising redesignated paragraph (c)(5).

P. Adding new paragraphs (c)(6) through (c)(16).

Q. Revising paragraph (g)(1)(iii).

R. Revising paragraph (g)(1)(iv).

S. Revising paragraph (k)(5)(i).

T. Redesignating paragraph (k)(5)(ii) as paragraph (k)(5)(iii).

U. Adding a new paragraph (k)(5)(ii).

V. Redesignating paragraphs (r)(2) and (r)(3) as paragraphs (r)(4) and (r)(5), respectively.

W. Adding a new paragraph (r)(2).

X. Adding a new paragraph (r)(3).

Y. Revising redesignated paragraph (r)(5).

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

* * * * *

(b) * * *

(2) To support a request for a discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan), the borrower's representative (or the parent in the case of a PLUS loan) must provide the lender with an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower for up to 60 days and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

* * * * *

(c) * * *

(1)(i) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in § 682.200(b), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability, as certified under § 682.402(c)(2) are returned to the sender.

(ii) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year period described in paragraph (c)(1)(i) of this section—

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

(B) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

* * * * *

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative—

(i) Submit, on a form approved by the Secretary, a certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b); or

(ii) Submit documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

(3) The lender must continue collection activities until it receives either the certification of total and permanent disability from a physician, a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, or documentation from the Social Security Administration, as described in paragraph (c)(2)(ii) of this section. Except as provided in paragraph (c)(5) of this section, after receiving the physician's certification or letter, or the documentation from the Social Security Administration, the lender may not attempt to collect from the borrower or any endorser.

(4) The lender must submit a disability claim to the guaranty agency—

(i) If the borrower submits a certification by a physician and the lender makes a preliminary determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) If the borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in 682.200(b).

(5) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(3) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(6) The guaranty agency must pay a claim submitted by the lender if—

(i) In the case of a preliminary determination of total and permanent disability based on a physician's certification, the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) In case of a preliminary determination of total and permanent disability based on a documentation from the Social Security Administration, the guaranty agency has determined that the documentation meets the requirements of § 682.402(c)(2)(ii).

(7) If the guaranty agency does not pay the disability claim, the lender must notify the borrower that the application for a disability discharge has been denied and the lender will continue to collect on the loan.

(8) If the guaranty agency pays the disability claim, the lender must notify the borrower that the loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

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

(10) The guaranty agency must assign the loan to the Secretary pursuant to § 682.409(c) and (d) after the Secretary pays the disability claim.

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

(12) If the Secretary makes a preliminary determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan is conditionally discharged and that the conditional discharge period will last for up to three years after the onset of the disability as certified under § 682.402(c)(2).

(13) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes the conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered delinquent or in default on the loan;

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

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

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

(14) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in § 682.402(c)(1)(ii), the balance of the loan is discharged.

(15) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (k)(12) of this section through the end of the conditional discharge period.

(16) The notification to the borrower described in paragraph (c)(12) of this section identifies the conditions of the conditional discharge period specified in paragraphs (c)(12) through (15) of this section.

* * * * *

(g) * * *

(1) * * *

(iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in either paragraph (c)(2)(i) or (c)(2)(ii) of this section.

* * * * *

(k) * * *

(5) * * *

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) dies, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the agency forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * *

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (r)(1) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

10. Section 685.200 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 685.200 Borrower eligibility.

(a)(1) * * *

(iv)(A) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the borrower—

(*1*) Obtains a certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(*2*) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled—

(*1*) The suspension of collection activity on the previous loan has been lifted;

(*2*) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(*1*) of this section; and

(*3*) The borrower signs a statement acknowledging that neither the previous loan nor the Direct Loan Program loan that the borrower receives may be discharged in the future on the basis of any impairment present when the new

loan is made, unless that impairment substantially deteriorates.

* * * * *

11. Section 685.212 is amended as follows:

A. By revising paragraphs (a) and (b).

B. By revising paragraph (g)(1).

C. By redesignating paragraph (g)(2) as (g)(3).

D. By adding a new paragraph (g)(2).

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or the student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan if the borrower's representative (or the parent in the case of a Direct PLUS Loan) provides the Secretary with an original or certified copy of the borrower's (or student's) death certificate.

(2) If an original or certified copy of the death certificate is not available, the Secretary discharges the loan only if the borrower's representative (or the parent) provides the Secretary with other reliable documentation acceptable to the Secretary establishing that the borrower (or student) has died.

(b) *Total and permanent disability.* If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

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(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, any payments received after the date that the eligibility requirements for discharge were met but before the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (b) of this section.* Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the onset of the disability, as certified under § 685.213(b). The Secretary also returns any payments received after the date the final discharge was approved.

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12. Section 685.214, 685.215, and 685.216 are redesignated as §§ 685.215; 685.216, and 685.220 respectively.

13. Section 685.213 is redesignated as § 685.214; a new § 685.213 is added to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) If the Secretary makes an initial determination that a borrower is totally and permanently disabled, the Secretary—

(i) Notifies the borrower that the loan will be in a conditional discharge status for up to three years from the date that the disabling condition began; and

(ii) Suspends any efforts to collect on the loan from the date of the initial determination described in paragraph (a)(1) of this section until the end of the conditional discharge period.

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

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns to the borrower any payments received—

(A) During the three-year conditional discharge period; or

(B) After the date a final discharge was approved under paragraph (a)(2)(i) of this section.

(3) If the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge at any time during or at the end of the three-year conditional discharge period, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (a)(1) of this section through the end of the conditional discharge period.

(4) Except as provided in paragraph (e)(1) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan, unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(b) *Conditional determination of total and permanent disability.* The Secretary makes a conditional determination that a borrower is totally and permanently disabled if the borrower (or the borrower's representative) provides the Secretary with—

(1) A certification (on a form approved by the Secretary) by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled as defined in 34 CFR 682.200(b); or

(2) Documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

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

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

(2) The borrower does not receive a new loan under the Direct Loan Program, the Federal Family Education Loan Program, or the Federal Perkins Loan Program.

(d) *Conditional discharge period.* During the conditional discharge period described in paragraph (a)(1) of this section, the borrower—

(1) Is not required to make any payments of principal or interest on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(2) Is not considered to be delinquent or in default on the loan;

(3) Must promptly notify the Secretary of any changes in the borrower's address or telephone number;

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

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

(e) *Provisions for discharge of Direct Consolidation Loans.* (1) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under the provisions of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(2) For the purposes of discharging a loan under paragraph (e)(1) of this section, the provisions of this section apply to each loan included in the

Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(3) If requested, a borrower seeking to discharge a loan obligation under paragraph (e)(1) of this section must provide the Secretary with the disbursement dates of the underlying loans.

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