

**DEPARTMENT OF EDUCATION****34 CFR Part 685**

RIN 1840-AC22

**William D. Ford Federal Direct Loan Program****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary of Education proposes to amend the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The proposed regulations would apply to loans under the Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) Program, the Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Program, the Federal Direct PLUS Loan (Direct PLUS Loan) Program, and the Federal Direct Consolidation Loan (Direct Consolidation Loan) Program, collectively referred to as the Direct Loan Program. These proposed regulations would provide schools with more flexibility in performing origination functions, and clarify the date of loan origination. These proposed regulations also would set timelines for the submission of promissory notes, disbursement records, and origination records. Finally, the regulations being proposed would address the repayment plans available for the consolidation of a single Federal Family Education (FFEL) Loan Program loan into the Direct Loan Program.

**DATES:** Comments on the proposed regulations must be received on or before October 31, 1995.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Ms. Katrina Ingalls, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026-3272. Comments may also be sent via the internet to: [direct-loans@ed.gov](mailto:direct-loans@ed.gov).

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katrina Ingalls. Telephone: (202) 708-9406. Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:****Background**

The Secretary proposes to amend the Direct Loan Program regulations (34 CFR Part 685), to improve the program based on experience gained during the first year of operation. These regulations propose programmatic changes that the Secretary believes would improve services to student and parent borrowers, increase institutional flexibility, and enhance the Department's administrative and fiscal oversight capabilities.

The Secretary proposes to revise the current definitions of school origination option 1, school origination option 2, and standard origination found in § 685.102 to increase program flexibility for schools and the Secretary. Under the proposed rules, with the approval of the Secretary, schools would be permitted to customize the origination process based on individual needs.

These proposed regulations would also clarify the date on which a Direct Loan is originated. For schools originating under school origination option 1 or option 2, the date of loan origination would be the earlier of: The date the promissory note is printed or the date the origination record is accepted by the Secretary. For a school that participates under standard origination, the date of loan origination would be the date the origination record is accepted by the Secretary. Beginning with the 1996-1997 loan year, originating schools will be able to generate a print date on the promissory note. This print date on the promissory note is a new step intended to establish an alternative method to document the loan origination date. This change will increase program flexibility. If a school originates a loan and prints the promissory note showing the print date and the student's eligibility changes before the loan origination record is transmitted to the Secretary, the school may make a disbursement to the borrower following the late disbursement guidelines. This change promotes flexibility in processing loans near the end of a student's period of enrollment.

As a result of administering the program for one year, the Secretary is convinced that services to borrowers would be substantially improved by requiring the timely submission of certain program data by schools to the

Direct Loan Servicer. In particular, it is imperative that borrowers receive disclosure information and loan servicing information shortly after the loan is disbursed. Further, Direct PLUS Loan borrowers enter repayment when the loan is fully disbursed and the Department must receive disbursement information in a timely manner in order to establish repayment terms. Therefore, in these regulations, the Secretary proposes to require schools to submit origination records, promissory notes, and disbursement records (both initial and subsequent), to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan. Further, this change would also serve to improve the Department's administrative and fiscal oversight capabilities of the program.

While program experience now indicates that establishing firm deadlines for the submission of origination records, promissory notes, and disbursement records is necessary, the Secretary is sensitive to the potential need for flexibility in this area. During the first year of a school's participation in the Direct Loan Program, the school must make changes to its administrative functions, implement new computer systems, and become familiar with Direct Loan Program requirements. At times, the transition to Direct Loans may seem complex to these schools, particularly in the initial stages of the transition. The Secretary assures schools that, during their first year of participation in the Direct Loan Program, these obstacles will be considered in determining the Secretary's position regarding an institution's compliance with program regulations. However, the proposed regulation to require schools to submit origination records, promissory notes, and initial and subsequent disbursement records to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan is particularly critical at the end of the Federal fiscal year (September 30th). To ensure program integrity and facilitate audit review, the Secretary will require that all documents for loans made during a fiscal year be submitted no later than 30 days following the end of the Federal fiscal year.

The Secretary is proposing to revise the repayment plan regulations to reflect the Secretary's current operational practice regarding the repayment plans available to a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program. Under the proposed regulations, borrowers who consolidate only one FFEL Program loan into the

Direct Loan Program would be required to initially choose a repayment plan other than the standard repayment plan.

The Secretary is considering establishing requirements for foreign school participation in the Direct Loan Program. Due to the nature of the Direct Loan Program, the Secretary believes that additional fiscal oversight and administrative requirements may be warranted for foreign schools. The Direct Loan Program is unique among the financial aid programs with respect to its funds disbursement processes and requirements. Because there is no authorized limit to the amount of funds that schools may draw down in the Direct Loan Program, the Department must rigorously oversee the funds disbursement process. To prevent potential program abuse, the Secretary is committed to the careful monitoring of the drawdown of funds to schools and then disbursement to students. To minimize potential risks to borrowers and taxpayers, the Secretary is considering additional school participation requirements for those foreign schools interested in participating in the Direct Loan Program. Therefore, the Secretary solicits comments and supporting arguments on what, if any, additional standards should be established for foreign schools that participate in the Direct Loan Program. The Secretary invites comments and supporting arguments on the potential financial risks, as well as benefits of admitting foreign schools into the Direct Loan Program. Finally, the Secretary requests comments and supporting statements concerning the potential losses or benefits to students related to foreign school participation in the Direct Loan Program.

#### *Proposed Regulatory Changes*

The following sections summarize the major changes in this notice of proposed rulemaking:

#### *Section 685.102 Definitions*

*School origination option 1, School origination option 2, and Standard origination:* The Secretary proposes to modify the definition of the specific functions that a school must perform for school origination option 1, school origination option 2 and standard origination. While the functions for the three levels would generally remain unchanged, in certain circumstances schools would have some flexibility in selecting the functions they would perform. Any request to modify the functions must be approved by the Secretary. Further, the regulations would specify that the Secretary has the

authority to modify the functions a school performs to best meet the needs of the program.

#### *Section 685.201 Obtaining a Loan*

Paragraphs (a)(2) and (b) of this section, which describe the school's responsibility to perform certain functions to process a Direct Loan, would be modified to provide the flexibility needed by schools to allow them, with the concurrence of the Secretary, to tailor the process to accommodate their individual needs.

#### *Section 685.208 Repayment Plans*

For purposes of consolidating one FFEL Program loan into a Federal Direct Consolidation Loan, the Secretary proposes to modify the available repayment plan options. Borrowers consolidating one FFEL Program loan would not be permitted to initially choose the standard repayment plan; however, they could choose the extended, graduated, or income contingent repayment plan. This proposed change appears in § 685.208(a)(1) and (2), and § 685.215(h)(2).

#### *Section 685.210 Choice of Repayment Plans*

In § 685.210(a), a new paragraph would be added advising the borrower that the Secretary will designate the extended repayment plan if a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program does not select a repayment plan.

#### *Section 685.215 Consolidation*

The Secretary proposes that § 685.215(h), which discusses repayment plans available to borrowers of Direct Consolidation Loans, be amended by adding a new paragraph. This new paragraph would provide that, for purposes of consolidating only one FFEL Program loan into a Federal Direct Consolidation Loan, borrowers may not initially choose the standard repayment plan.

#### *Section 685.301 Origination of a Loan by a Direct Loan Program School*

The Secretary proposes to add a new paragraph to this section to clarify the date of origination. A school may only originate a loan while the student meets the borrower eligibility requirements. Through the origination process, a school certifies a borrower's eligibility for a loan, the loan amount, and anticipated disbursement dates. The proposed rule provides that the date of loan origination would be the earlier of the date that the school prints the

promissory note or the date that the origination record is accepted by the Secretary.

The Secretary also proposes to amend the regulations to require schools to submit the promissory note, disbursement record (original and subsequent), and origination record no later than 30 days of the date of disbursement of loan funds. Requiring the timely submission of program data would result in improved services to borrowers and would also enhance the Department's administrative and fiscal oversight capabilities.

#### *Executive Order 12866*

##### 1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

##### 2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations

clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 685.215 *Consolidation*.) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5100 FB-10), Washington, DC 20202-2241.

#### *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. The small entities that would be affected by these regulations are institutions of higher education. Certain reporting, recordkeeping, and compliance requirements are imposed on schools by the regulations. These requirements, however, would not have a significant impact on these institutions and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

#### *Paperwork Reduction Act of 1995*

Section 685.301 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of information: Reporting loan origination and disbursement records, and submitting promissory notes.

The Department collects information regarding Direct Loan Program loan origination. These regulations require postsecondary institutions participating in the Direct Loan Program to submit student and parent loan origination records, promissory notes, and

disbursement records to the Secretary within 30 days of disbursement. Direct Loan Program loans are usually made once each academic year to eligible parent and student borrowers. Promissory notes and origination records are submitted once for each loan; funds are disbursed in at least two installments. This Loan origination information is needed to establish that a legally-enforceable loan exists and to service and collect that loan.

Annual reporting burden for this collection of information is estimated to average 0.3 burden hours for each of the projected 1,986,857 loans. The total annual reporting burden equals 59,606 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them 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.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through 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 collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

#### *Invitation to Comment*

Interested persons are invited to submit comments and recommendations

regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

#### *Assessment of Educational Impact*

The Secretary requests comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 685

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

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

Dated: September 13, 1995.

Richard W. Riley,

*Secretary of Education.*

The Secretary proposes to amend part 685 of title 34 of the Code of Federal Regulations to read 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. 1078a *et seq.*, unless otherwise noted.

2. Section 685.102, paragraph (b) is amended by revising the definitions of "School origination option 1," "School origination option 2," and "Standard origination."

#### **§ 685.102 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*School origination option 1:* In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may

modify the functions performed by a particular school.

*School origination option 2:* In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

\* \* \* \* \*

*Standard origination:* In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Secretary, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Secretary, and reconciles on a monthly basis. The Secretary prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Section 685.201 is amended by revising paragraph (a)(2) introductory text, and paragraph (b) to read as follows:

**§ 685.201 Obtaining a loan.**

(a) \* \* \*  
 (2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled shall perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions:

\* \* \* \* \*

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application and promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application and

promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions: A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

\* \* \* \* \*

(Authority: 20 U.S.C. 1087 a *et seq.*, 1091a)

4. Section 685.208 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

**§ 685.208 Repayment plans.**

(a) *General.* (1) Except as provided in § 685.215, a borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) Except as provided in § 685.215, a borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

\* \* \* \* \*

(Authority: 20 U.S.C. 1087a *et seq.*)

5. Section 685.210 is amended by revising paragraph (a)(2) and by adding a new paragraph (a)(3) to read as follows:

**§ 685.210 Choice of repayment plan.**

(a) \* \* \*  
 (2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower, unless the borrower is consolidating only one FFEL Program loan.

(3) If a borrower consolidating only one FFEL Program loan into the Direct Loan Program does not initially select a repayment plan offered by the Secretary, the Secretary will designate the extended repayment plan described in § 685.208(c) for the borrower.

\* \* \* \* \*

(Authority: 20 U.S.C. 1087a *et seq.*)

6. Section 685.215 is amended by revising paragraph (h)(1), redesignating paragraph (h)(2) as paragraph (h)(3) and adding a new paragraph (h)(2) to read as follows:

**§ 685.215 Consolidation.**

\* \* \* \* \*

(h) \* \* \*

(1) A borrower may not repay a Direct PLUS Consolidation Loan under the income contingent repayment plan;

(2) A borrower consolidating only one FFEL Program loan into the Direct Loan Program may not initially select the standard repayment plan (described in § 685.208(b)).

\* \* \* \* \*

7. Section 685.301 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraph (a)(6) and (a)(7), respectively, adding a new paragraph (a)(5) and by adding a new paragraph (d) to read as follows:

**§ 685.301 Origination of a loan by a Direct Loan Program school.**

(a) \* \* \*

(5) The date of loan origination is the earlier of—

(i) The date the promissory note is printed; or

(ii) The date the origination record is accepted by the Secretary.

\* \* \* \* \*

(d) *Reporting to the Secretary.* (1) A school that originates a loan must submit the promissory note, loan origination record, and initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the loan origination record and disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(2) A school that participates under standard origination must submit the initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(Authority: 20 U.S.C. 1087a *et seq.*)

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