

**DEPARTMENT OF EDUCATION****34 CFR Part 682**

RIN 1840-AC21

**Federal Family Education Loan Program****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The Secretary is proposing to make changes to the FFEL Program regulations to reflect policies and procedures implemented in the William D. Ford Federal Direct Student Loan Program, hereinafter referred to as the Direct Loan Program.

**DATES:** Comments must be received on or before October 23, 1995.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Pamela A. Moran, U.S. Department of Education, Post Office Box 23272, Washington, DC 20026-3272. Comments may also be sent through the internet to [ffel\\_conform@ed.gov](mailto:ffel_conform@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:** Barbara Bauman, Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, SW. (room 3053, ROB-3), Washington, DC 20202-5449. Telephone: (202) 708-8242.

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 is proposing to amend 34 CFR Part 682 of the Department's regulations to adopt certain policies and procedures that have been used in the Direct Loan Program.

On October 7, 1994, the Secretary published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (59 FR 51346) proposing changes to the FFEL regulations to reflect certain policy decisions made during development of the Direct Loan regulations. The comments on the NPRM suggested additional changes to those included in the proposed rule. In publishing the final regulations on November 29, 1994 (59 FR 61210), the Secretary stated that he needed to further evaluate the implications of these additional changes. This NPRM proposes to adopt many of the suggestions made by those comments. The Secretary believes these regulations will streamline and improve the efficiency of the FFEL program.

By improving the efficiency of the FFEL Program, these proposed regulations will enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically-advanced skills needed for today's and tomorrow's workplace. These programs provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

**Proposed Regulatory Changes**

The Secretary proposes to amend the following sections of the regulations to reflect changes needed to conform the FFEL Program to the final regulations for the Direct Loan Program. Those changes not related to the Direct Loan Program are otherwise noted.

**Section 682.200 Definitions**

**Satisfactory repayment arrangement**—The Secretary, in order to

reflect a recent statutory change made by the Higher Education Technical Amendments of 1993, Public Law 103-208, proposes to amend the regulations to clarify that a borrower may make satisfactory repayment arrangements on a defaulted FFEL debt for purposes of regaining Title IV eligibility only one time.

**Section 682.201 Eligible Borrowers**

Section 682.201(c)(1)(iii)(D)—In order to align the FFEL Program with the Direct Loan Program regulations, the Secretary proposes to allow a borrower in a default status to be eligible for a consolidation loan if the borrower either makes satisfactory repayment arrangements as that term is defined or agrees to repay the consolidation loan under an income-sensitive repayment plan.

**Section 682.207 Due Diligence in Disbursing a Loan**

Section 682.207(c)(4)—The Secretary proposes, in order to conform to Direct Loan Program regulations and to reflect current FFEL policy, to allow a loan to be disbursed in a single installment, if at least one-half of the loan period has elapsed before the first disbursement is made.

Section 682.207(d)(2)(iii)—The Secretary proposes to clarify that a lender has an additional 30-day period to make a late disbursement of a loan if the school documents a borrower's exceptional circumstances. Previously, the regulations suggested that documentation of the exceptional circumstances was required for all late disbursements.

The Secretary also proposes to remove the references in § 682.207 and § 682.604 providing for lender or guaranty agency options regarding disbursement policies, so that every eligible student is assured certain opportunities with the approval of the school.

**Section 682.209 Payment Application and Prepayment**

Section 682.209(b)(2)—The Secretary further clarifies that this section deals with the application of payments and how to deal with prepayments. The Secretary proposes to require a lender who receives a prepayment (made by a borrower without the borrower's specific instructions as to how to apply the proceeds) in an amount that equals or exceeds the borrower's scheduled monthly repayment amount to apply that amount to future installment payments on the loan by advancing the borrower's next payment due date. The Secretary proposes this change

(previously left to the lender's discretion and allowed only in situations where a borrower's payment exceeded 3 full payments) to conform to current Direct Loan Program policies and so that all borrowers are treated equally.

#### *Section 682.210 Deferment*

Section 682.210(a)(8)—The Secretary proposes to clarify that a defaulted borrower is eligible for a deferment only if the borrower has made satisfactory repayment arrangements with the lender prior to the lender's filing of a default claim on the loan.

#### *Section 682.211 Forbearance*

Section 682.211(f)(9)—The Secretary proposes to allow a lender to provide administrative forbearance in situations where a borrower ends a period of eligible deferment in delinquent status.

#### *Section 682.401 Basic Program Agreement*

Section 682.401(b)(10)(vi)(B)(1)—The Secretary proposes that in instances where a loan or a portion of a loan is returned by the school at any time to a lender, the lender shall refund to the borrower the premium attributable to each disbursement of the loan.

#### *Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments*

Section 682.402—The Secretary proposes to clarify that a lender must return any payments made by or on behalf of the borrower after the date that the borrower became totally and permanently disabled as certified by a physician. At the same time that the lender returns the payments to the borrower or sender, the lender must notify the borrower or sender that there is no obligation to repay that loan.

Also, the Secretary proposes, in order to conform with the Direct Loan Program, that if a guaranty agency receives any payments from a borrower or a borrower's representative for a loan discharged in bankruptcy on which the Secretary previously paid a claim, the agency must return 100% of these payments to the borrower. Previously these payments were remitted to the Secretary. At the same time that the guaranty agency returns the payments to the borrower or representative the agency must notify the borrower that there is no obligation to repay that loan.

#### *Section 682.412 Consequences of the Failure of a Borrower or Student To Establish Eligibility*

Section 682.412(c)—The Secretary is making a change in the regulations to clarify that a borrower has 30 days from

the date a final demand letter is sent by the lender in which to repay an amount for which the borrower was ineligible.

#### *Section 682.603 Certification by a Participating School in Connection With a Loan Application*

Section 682.603 (f) and (g)—The Secretary proposes this change to conform to language in the Direct Loan Program regulations.

#### *Section 682.605 Determining the Date of a Student's Withdrawal.*

Section 682.605(c)—The Secretary is reinserting language that was inadvertently deleted during the development of the November 29, 1994 final regulations regarding the determination of the date of a student's withdrawal for purposes other than calculating a refund.

#### *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 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 this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading 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 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 program.

##### *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 proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed 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, § 682.200 *Definitions*.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the 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 how the Department could make these proposed regulations easier to understand should be sent to Stanley M. 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.

While the statute requires that the Secretary regulate certain actions that must be taken by various program participants, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal additional requirements to protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

##### *Paperwork Reduction Act of 1995*

Sections 682.207, 682.209, 682.210, 682.211, 682.401, 682.402, 682.412, 682.603, 682.604 and 682.605 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of

Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program. Documentation and notification requirements.

These regulations require institutions to document a borrower's exceptional circumstances in instances where a lender disburses a loan within 30 days beyond the usual 60-day period. A lender is now required to advance a borrower's due date for repayment if a borrower doesn't indicate how a payment that equals or exceeds a scheduled monthly payment should be applied. In those instances, these regulations require the lender to notify the borrower that the payment has been applied in such a manner and the next payment due date. A lender or guaranty agency must now return any payments made by or on behalf of the borrower after the date that the borrower became totally and permanently disabled as certified by a physician and if a guaranty agency receives any payments from a borrower or a borrower's representative for a loan discharged in bankruptcy on which the Secretary previously paid a claim, the agency must return 100% of the payments to the borrower. In both of these circumstances, a lender and guaranty agency must also notify the borrower that there is no obligation to repay that loan.

There is no annual frequency of reporting this information to the Department. However, the recordkeeping burden for this collection of information is estimated to average 1 hour per response for 12,803,255 respondents, including the time for documenting circumstances, researching existing data sources, gathering and maintaining the data needed, and generating and processing the collection of information. The total annual recordkeeping burden equals 12,803,255 hours.

These regulations affect the business, for-profit and not-for-profit entities that participate in the Title IV Federal student aid programs.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, 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 particularly requests comments on whether the proposed regulations in this document 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 682**

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 84.032, Federal Family Education Loan Program)

Dated: September 13, 1995.

Richard W. Riley,  
*Secretary of Education.*

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

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

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

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

2. Section 682.200, paragraph (b) is amended by revising paragraph (1) of the definition of "satisfactory repayment arrangement" to read as follows:

**§ 682.200 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Satisfactory repayment arrangement.* (1) For purposes of regaining eligibility under section 428F (b) of the HEA, the making of six (6) full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

\* \* \* \* \*

3. Section 682.201 is amended by revising paragraph (c)(1)(iii)(C) to read as follows:

**§ 682.201 Eligible borrowers.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) In a default status and has either made satisfactory repayment arrangements or has agreed to repay the consolidation loan under the income sensitive repayment plan described in § 682.209(a)(6)(viii).

\* \* \* \* \*

4. Section 682.207 is amended by adding a new paragraph (c)(4) and revising paragraphs (d)(1) and (d)(2)(iii) to read as follows:

**§ 682.207 Due diligence in disbursing a loan.**

\* \* \* \* \*

(c) \* \* \*

(4) If at least one-half of the loan period has elapsed when the first disbursement is made, the loan may be disbursed in a single installment.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d)(2) and (3) of this section.

(2) \* \* \*

(iii) In exceptional circumstances within 30 days after the period

described in paragraph (d)(2)(ii) of this section. The school shall document the exceptional circumstances in the student's file.

\* \* \* \* \*

5. Section 682.209 is amended by revising paragraph (b) to read as follows:

**§ 682.209 Repayment of a loan.**

\* \* \* \* \*

(b) *Payment application and prepayment.* (1) The lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. If the lender applies payments to future installments without the borrower's request, it shall notify the borrower that the payments have been so applied, and remind the borrower of the repayment obligation and the next scheduled due date.

\* \* \* \* \*

6. Section 682.210 is amended by revising paragraph (a)(8) to read as follows:

**§ 682.210 Deferment.**

(a) \* \* \*

(8) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made satisfactory repayment arrangements with the lender prior to the filing of a default claim.

\* \* \* \* \*

7. Section 682.211 is amended by adding a new paragraph (f)(9) to read as follows:

**§ 682.211 Forbearance.**

\* \* \* \* \*

(f) \* \* \*

(9) For a period of delinquency that may remain after a borrower ends a period of deferment.

\* \* \* \* \*

8. Section 682.401(b)(10)(vi)(B), introductory text, is amended by adding a dash after the word "if", and by removing "within 120 days of disbursement"; redesignating paragraphs (B)(1), (B)(2), and (B)(3) as paragraphs (B)(2), (B)(3), and (B)(4), respectively; at the beginning of redesignated paragraphs (B)(2), (B)(3) and (B)(4) remove "The" and add, in its

place, "Within 120 days the"; and a new paragraph (B)(1) is added to read as follows:

**§ 682.401 Basic program agreement.**

\* \* \* \* \*

(b) \* \* \*

(10) \* \* \*

(vi) \* \* \*

(B) \* \* \*

(1) The loan or a portion of a loan is returned by the school to the lender;

\* \* \* \* \*

9. Section 682.402 is amended by revising paragraph (c)(3); removing "(l)(2)" in paragraph (l)(3) and adding, in its place, "(l)(1)"; by revising paragraphs (l)(1) and (l)(2) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return to the borrower any payments received by the lender after the date that the borrower became totally and permanently disabled as certified by the physician. At the same time that the lender returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of disability.

\* \* \* \* \*

(l) \* \* \*

(1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall return 100 percent of these payments to the sender. The guaranty agency shall promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the sender that there is no obligation to repay a loan discharged on the basis of death, disability, bankruptcy, false certification, or closing of the school.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

\* \* \* \* \*

10. Section 682.412 is amended by revising paragraph (c) to read as follows:

**§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.**

\* \* \* \* \*

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

\* \* \* \* \*

11. Section 682.603 is amended by adding a new paragraph (f)(4) and by revising paragraph (g) to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL Program forms or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

\* \* \* \* \*

12. Section 682.604 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), introductory text, at the beginning of the paragraph, removing "If the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and", and capitalizing the "i" in the word "if".

\* \* \* \* \*

13. Section 682.605 is revised to read as follows:

**§ 682.605 Determining the date of a student's withdrawal.**

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, a school shall follow the procedures in 34 CFR 688.22(j) for determining the student's date of withdrawal. In a case of a summer break, the school must determine the student's date of withdrawal no later than 30 days after the first day of the next scheduled term.

(b) Except for students involved in a summer break as provided in paragraph (a) of this section, the school shall use

the date determined under 34 CFR 668.22(j) for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under 34 CFR 668.22.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

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