

DEPARTMENT OF EDUCATION

34 CFR parts 682 and 685

RIN 1845-AA00

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

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement recently enacted changes to the Higher Education Act of 1965 made by the Higher Education Amendments of 1998. The proposed regulations deal with provisions of the Higher Education Amendments of 1998 that affect FFEL borrowers, schools, lenders, and guaranty agencies and Direct Loan borrowers and schools. These proposed regulations seek to improve the efficiency of Federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments concerning these proposed regulations to Ms. Patsy Beavan and Ms. Nicki Meoli, U.S. Department of Education, PO Box 23272, Washington, DC 20026-3272. If you prefer to send your comments through the Internet, use the following address: loansnprm@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 representatives named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202-5346. 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 alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

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

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the 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 docket 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 FIRS at 1-800-877-8339.

General*Background*

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (Pub. L. 105-244) (1998 Amendments) to amend the Higher Education Act of 1965, as amended (HEA). The 1998 Amendments contained a number of changes to the Title IV programs. This notice of proposed rulemaking (NPRM) addresses many of the changes that affect the FFEL and Direct Loan programs.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement 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 published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (<http://ifap.ed.gov>).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four

committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee II (committee), which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs.
- 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 Board.
- 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 reached on all of the proposed regulations in this document.

Proposed Regulatory Changes

These proposed regulations include, in addition to the changes made to the HEA by the 1998 Amendments, conforming changes and minor technical changes.

The proposed regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following discussion of the proposed regulations begins with changes that affect only the FFEL Program, followed by changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program Changes

Section 682.102—Obtaining and Repaying a Loan

The proposed regulations would modify this section to reflect the change made by the 1998 Amendments to section 432(m)(1)(C) of the HEA, to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000. These proposed regulations also include language to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.

The proposed regulations also would revise this section to reflect the change made by the 1998 Amendments to allow a borrower with multiple FFEL holders to secure an FFEL Consolidation loan from any eligible FFEL lender.

Section 682.200—Definitions

The proposed regulations would implement changes made by the 1998 Amendments to the definition of an eligible lender in section 435(d)(5) of the HEA. Specifically, the 1998 Amendments created an exception to the long-standing provision that prohibits a lender from providing inducements to schools to secure loan applications. The exception added by the 1998 Amendments provides that, notwithstanding the general prohibition on inducements, a lender may provide a school with assistance “that is comparable to the kinds of assistance that is provided by the Department of Education.”

The Department expressed its view that the purpose of the new exception was to allow lenders to provide assistance to schools similar to that provided by the Department to schools in the Direct Loan Program and therefore suggested that the proposed regulations be limited to the assistance provided by the Department for the Direct Loan Program. The committee agreed to proposed regulatory language that permits lenders to provide assistance “comparable to the kinds of

assistance provided by the Secretary under, or in furtherance of the Federal Direct Loan Program.” This proposed language would reflect congressional intent to broaden the types of assistance that lenders may provide to a school while retaining meaning for the prohibition against lenders providing inducements to schools.

The 1998 Amendments did not change the general prohibition that lenders cannot provide services, at less than market value, to a school in order to secure applications. In general, we believe that most goods and services that a lender provides to a school at less than their fair market value are, by definition, an inducement. If those goods and services are provided by the lender to secure applicants for loans, the inducement would be prohibited. This is especially true with regard to goods and services provided by a lender that are used by the school to meet its Title IV program responsibilities under the law and the regulations. The Secretary believes that it is not necessary for the lender to specifically tie the goods and services to loan applications for certain activities to be considered improper inducements.

Prior to the 1998 Amendments, certain activities by lenders could have constituted a prohibited inducement. In light of the new law, these proposed regulations broaden the types of assistance that lenders may provide to schools. Accordingly, the following are examples of activities that would not jeopardize a lender’s status as an eligible lender:

- **Counseling:** A lender may support schools in meeting their responsibilities to provide borrowers with initial counseling, exit counseling, and general debt counseling. In providing this support, lenders may:

- Assist in the development, production, and distribution of materials used by schools in counseling activities.

- Develop, and offer to schools, electronic products and services, including web-based processes, that can be used to meet counseling requirements.

- Participate in counseling sessions offered by a school, provided that the school maintains control of these events and school staff members are present.

- Participate in initial counseling, provided that the lender’s activities reinforce the student’s right to choose a lender.

- **Outreach:** A lender may support schools in activities to inform the public or students of the availability of student aid, including student loans. Lender participation might include such

activities as: Providing publicity for outreach events; preparing, producing, and distributing materials; providing light refreshment; and providing staff to assist the school in the presentation. Permissible outreach activities also include those that are undertaken by a lender in conjunction with a guaranty agency.

- *Computer Support:* A lender may provide computer software, technical support, and training— but not computer hardware— that support the technological processes used by the lender in its administration of the FFEL Program.

- *Training:* A lender may provide specialized training to schools in support of their FFEL Program processes. This training may be provided in person, either on or off campus, or through the use of technology. A lender may not provide school staff additional services or goods (other than items of nominal value) in connection with the training, and it may not pay expenses incurred by school staff for the training.

Section 682.201—Eligible Borrowers

The proposed regulations would implement a change made by the 1998 Amendments to section 428C(a)(3)(A) of the HEA that prohibits a borrower from receiving an FFEL Consolidation loan if the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order on a loan made under the HEA. The committee agreed to apply this restriction only to the loans the borrower wishes to consolidate. Therefore, a borrower against whom an administrative wage garnishment order or a judgment has been issued may receive an FFEL Consolidation loan, but may not include loans subject to litigation or administrative wage garnishment in the FFEL Consolidation loan. The committee also agreed that these loans should be ineligible for consolidation only until the judgment has been vacated or the administrative wage garnishment order has been lifted.

The proposed regulations also would reflect the changes made by the 1998 Amendments to section 428C(a)(3)(B) of the HEA to expand the universe of loans that may be included in an FFEL Consolidation loan. Under the 1998 Amendments, loans received prior to the borrower's receipt of an FFEL Consolidation loan may be added to the FFEL Consolidation loan during the 180-day period following the making of the FFEL Consolidation loan. Loans received by the borrower during the 180-day period following the making of the FFEL Consolidation loan may also

be added during that period. Finally, loans received prior to the date of a borrower's first FFEL Consolidation loan may be added to any subsequent FFEL Consolidation loan the borrower obtains. However, the proposed regulations would clarify that a single FFEL Consolidation loan may not be re-consolidated without the borrower having another eligible loan to consolidate.

Prior to enactment of the 1998 Amendments, a borrower's eligibility to receive an FFEL Consolidation loan terminated upon receipt of an FFEL Consolidation loan, except that the borrower could add loans received prior to the date of the FFEL Consolidation loan during the 180-day period after the FFEL Consolidation loan was made. Loans made prior to, but not included in, the FFEL Consolidation loan were permanently ineligible for consolidation. The new statutory provisions that are reflected in these proposed regulations would provide more opportunities for borrowers to add loans to existing FFEL Consolidation loans.

The proposed regulations also would reflect the change made by the 1998 Amendments to section 428C(b)(1)(A)(i) of the HEA that permits a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan. Prior to this change, a borrower had to request an FFEL Consolidation loan from the holders of all of his or her existing loans before requesting a loan from a different lender. Under the proposed rules, a borrower with a single holder may apply to another eligible FFEL lender only if the borrower is either unable to receive an FFEL Consolidation loan from the holder or is unable to receive an FFEL Consolidation loan with income-sensitive repayment terms.

Section 682.202—Permissible Charges by Lenders to Borrowers Capitalization of Interest

Interest Rates

The proposed regulations would reflect the changes made by the 1998 Amendments to the interest rate formulas for FFEL Program loans in section 427A of the HEA. The 1998 Amendments made permanent the temporary interest rate formulas that were added to the HEA by the Transportation Equity Act for the 21st Century, Pub. L. 105-178 (TEA), enacted June 9, 1998. TEA created interest rate formulas for new student and parent loans first disbursed on or after July 1, 1998, and before October 1, 1998. The 1998 Amendments applied

these same formulas to loans first disbursed on or after October 1, 1998, and before July 1, 2003. Accordingly, the proposed regulations reflect the different formulas for interest rates on FFEL Program loans.

As provided by the HEA and reflected in these proposed regulations, the interest rate on Stafford loans during the repayment period is calculated based on the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 2.3 percent and during the in-school and grace periods as the 91-day Treasury bills plus 1.7 percent, with a cap during these periods of 8.25 percent. The formula for PLUS loan interest rates is the 91-day Treasury bills plus 3.1 percent not to exceed 9 percent. In addition, the proposed regulations reflect the statutory formula for the interest rate on FFEL Consolidation loans for which the application is received by the lender on or after October 1, 1998, as the lesser of the weighted average of the interest rates on the loans consolidated rounded upward to the nearest one-eighth of one percent, or 8.25 percent.

Capitalization of Interest

The proposed regulations also would implement the changes made by the 1998 Amendments to the rules for capitalization of interest on unsubsidized Stafford loans. The 1998 Amendments modified the rules governing the frequency of capitalization during certain periods in which the borrower is not making payments on the principal of an unsubsidized Stafford loan. Under these new rules, a lender would be able to add accrued interest to the principal only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults.

The committee engaged in lengthy discussions as to how interest that accrues during a period of forbearance should be treated. There was also lengthy discussion as to whether these changes covered subsidized Stafford loans during periods of forbearance as well as unsubsidized Stafford loans during all periods in which payments of principal are not being made. (The only issue on subsidized Stafford loans was the treatment of periods of forbearance because the Department does not pay interest on the borrower's behalf during these periods.) The committee also engaged in lengthy discussions as to whether, if there were consecutive periods covered by these new

requirements (for example, a deferment period immediately followed by a forbearance period), the capitalization of the accrued interest should take place at the end of each period or the end of the consecutive covered periods.

After much discussion, the committee reached consensus on these draft regulations. Under these proposed rules, for loans first disbursed on or after July 1, 2000 (the effective date of these proposed regulations), periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules. Further, the committee agreed to propose that the capitalization could take place at the expiration of each covered period rather than at the end of a series of consecutive covered periods. For unsubsidized Stafford loans disbursed on or after the date of enactment of the 1998 Amendments (October 7, 1998) and prior to July 1, 2000, the lender must capitalize interest pursuant to section 428H(e)(2) of the HEA.

The committee believed that the proposed regulations would maximize borrower benefits by reducing the costs of capitalization. The Secretary believes that the proposed regulations would maintain the historic regulatory approach of treating periods of deferment and forbearance similarly in the area of capitalization.

Origination Fees

The proposed regulations would also implement changes to the rules governing origination fees made to section 438(c) of the HEA by the 1998 Amendments. The 1998 Amendments require any lender who charges student borrowers an origination fee to charge the same fee to all student borrowers. The law also permits a lender to assess a lower origination fee to a borrower demonstrating "greater financial need," as determined by the borrower's adjusted gross income. The 1998 Amendments, for the first time, establish provisions governing a lender's decision to offer a reduced origination fee on subsidized and unsubsidized Stafford loans. Prior to these amendments, a lender had discretion to waive or lower the fee charged to a particular subsidized Stafford loan borrower. The 1998 Amendments limit the lender's discretion and make a lower fee a term or condition of the loan if the lender chooses to charge a reduced fee to any borrower.

The committee engaged in extensive discussions regarding the appropriate standard for determining "greater financial need" for this purpose. The

committee discussed a number of different possible standards including: an expected family contribution (EFC) of "O," an EFC that makes students eligible for a Federal Pell Grant, and eligibility for a subsidized Stafford loan. In addition, since each lender must apply its origination fee policies to all borrowers, there were also extensive discussions as to what constitutes a lender for purposes of this provision. Some negotiators inquired about how trust relationships would be evaluated under this regulation.

Ultimately, the committee reached consensus on both of these issues. On the issue of the standard for "greater financial need," the committee agreed to propose that a lender would be permitted to use two standards to determine whether a borrower demonstrates greater financial need to allow lenders operational and financial flexibility. Under the proposed regulations, a lender could consider a borrower as demonstrating greater financial need if—

- The borrower's EFC used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified; or
- The borrower qualifies for a subsidized Stafford loan.

To allow for situations in which a lender wants to use a comparable alternative, the committee also agreed to propose that a lender, with the approval of the Secretary, would be able to use some other standard to determine whether a borrower demonstrates greater financial need.

The proposed regulations would specify that a lender that charges a borrower a lower origination fee on the borrower's unsubsidized Stafford loan must charge the same lower fee on the borrower's subsidized Stafford loan. This requirement will ensure that borrowers who demonstrate greater financial need will receive the benefit of lower origination fees on both loan types for which they may be eligible.

The proposed regulations also would provide that all lenders under common ownership, including ownership by a common holding company, constitute a single lender for purposes of this section. The proposed regulations further would provide that any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf is considered the lender. We believe that this definition will ensure that all borrowers who have loans from a particular lender will be treated equitably.

Section 682.206—Due Diligence in Making a Loan

The proposed regulations include changes in this section to conform these rules to proposed changes made in § 682.603 of the regulations related to loan certification of borrower eligibility by the school, and in § 682.401 of the regulations related to the use of the MPN.

Section 682.207—Due Diligence in Disbursing a Loan

Section 682.207 of the proposed regulations would add a new provision to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets certain criteria specified in the 1998 Amendments. The criteria, contained in § 682.604 of the proposed regulations, specify that the exemption applies to two groups of schools: (1) Those certifying loans for a single term, with FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates of less than ten percent for each of the three most recent years for which rates have been calculated and; (2) those certifying loans for students in study abroad programs when the school certifying the loan has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the most recent year for which rates have been calculated. Consistent with the current practice, the committee agreed to propose that lenders would be permitted to rely upon the disbursement schedule provided by the school in making single installment loans.

Section 682.209—Repayment of a Loan

The proposed regulations would implement the addition made by the 1998 Amendments of section 428(b)(9)(A)(iv) of the HEA that requires a lender to offer FFEL borrowers, including FFEL Consolidation loan borrowers, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years. The extended repayment plan is available to a new borrower (one with no outstanding balance on an FFEL Program loan as of October 7, 1998), whose total outstanding FFEL loans exceed \$30,000.

The proposed regulations in this section also would reflect the new statutory provision allowing borrowers to change repayment plans annually.

Section 682.300—Payments of Interest Benefits on Stafford and Consolidation Loans

The proposed regulations include a change in this section to conform these rules to a proposed change in § 682.301 of the regulations related to the interest subsidy payment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

The proposed regulations would reflect changes made by the 1998 Amendments to section 428C(b) of the HEA that extended the authority for payment of interest subsidy on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment. This provision does not apply to the portion of the loan that does not represent Health Education Assistance Loans (HEAL). This borrower benefit was originally included in the Emergency Student Loan Consolidation Act of 1997 and was extended by the 1998 Amendments.

Section 682.301 also includes provisions necessary to conform to the changes in § 682.603 of the proposed regulations related to loan certification by a school.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

The proposed regulations would modify this section to reflect amendments to section 523(a)(8) of Title 11 of the United States Code (the Bankruptcy Code) included in the 1998 Amendments that eliminate the seven-year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. The Bankruptcy Code now permits discharge of an FFEL Program loan after that date only on the grounds of undue hardship. The proposed regulations reflect the change in the criteria for bankruptcy petitions filed on or after October 8, 1998, and revise lender and guaranty agency claim filing procedures related to these loans.

Section 682.402 of the proposed regulations also includes conforming changes necessary for the implementation and use of the MPN. In particular, the proposed regulations would provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is

found to be unenforceable. However, if a court rules that the loan is not enforceable solely because of the lack of evidence of the confirmation process or processes, the lender and the guaranty agency must repay any insurance and reinsurance payments received on the loan.

Section 682.406—Conditions of Reinsurance Coverage

The proposed regulations would include conforming changes necessary to implement and use the MPN.

Section 682.409—Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations contain a conforming change relating to the MPN. The proposed regulations would clarify the rules governing assignment of defaulted loans to the Secretary by specifying that mandatory assignment of one loan made under an MPN does not constitute assignment of all loans made under the MPN.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

The proposed regulations would make conforming changes to this section which are necessary to implement the MPN. In particular, this section would require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.

Section 682.603—Certification by a Participating School in Connection with a Loan Application

The proposed regulations would reflect changes made by the 1998 Amendments to section 428(a)(2) of the HEA that reduce the types of information a school is required to provide to a lender in certifying a Stafford loan. To reflect the statute, the proposed regulations would require the school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule. The proposed regulations would require the school to maintain documentation of the determination of the borrower's need (based on the cost of attendance, estimated financial assistance, and, if applicable, EFC).

The proposed regulations in this section also would specify that schools that qualify for exemption from the multiple disbursement requirement or the requirement for delayed delivery of

loan funds for first-time borrowers—due to their low FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates—must cease certifying loans based on those criteria no later than 30 days after the school is notified that it no longer meets the qualifications. The committee agreed that this 30-day period after notification was necessary to allow the school sufficient time to advise students of this change in the school's status and to make necessary system and procedural changes.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

The proposed regulations would make conforming changes to this section that are necessary to implement and use the MPN and to reflect the modified loan certification requirements of the school in 682.603 of the proposed regulations.

FFEL and Direct Loan Program Changes

Sections 682.102 and 685.201—Master Promissory Note

The proposed regulations in these sections would make conforming changes necessary to reflect the implementation of the MPN in the FFEL and Direct Loan programs. A more detailed discussion of the MPN is provided in the discussion of changes to §§ 682.401 and 685.402 in this preamble.

Sections 682.200 and 685.102—Definitions of Default, Estimated Financial Assistance, and Master Promissory Note

The proposed regulations would revise the FFEL and Direct Loan program definitions of "Default" and "Estimated financial assistance" to reflect changes made to sections 435(l) and 428(a)(2)(C) of the HEA by the 1998 Amendments. The proposed regulations also would add the term "Master promissory note" to the definition sections in the FFEL and Direct Loan program regulations, as part of the implementation of the MPN as provided in section 432(m)(1)(D) of the HEA.

Default

The 1998 Amendments extended the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan from—

- 180 days to 270 days for FFEL and Direct Loan program loans repayable in monthly installments; and
- 240 days to 330 days for FFEL Program loans repayable less frequently than monthly installments.

The proposed regulations would modify the existing definition of default to reflect this statutory change.

Estimated Financial Assistance

Before enactment of the 1998 Amendments, schools were required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code as "estimated financial assistance" for the purpose of determining a borrower's eligibility for FFEL and Direct Loan program loans. The 1998 Amendments changed this requirement for the purpose of determining eligibility for subsidized FFEL and Direct Loan program loans. Schools no longer are required to include the specified veterans' educational benefits paid in the calculation of estimated financial assistance when determining eligibility for subsidized FFEL and Direct Loan program loans.

The 1998 Amendments also now require schools to include national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans. However, schools are not required to include these benefits when determining a borrower's eligibility for subsidized FFEL and Direct Loan program loans.

The proposed regulations reflect these statutory changes affecting the treatment of veterans' educational and AmeriCorps benefits in determining estimated financial assistance.

Master Promissory Note

The proposed regulations include a definition of the term "Master promissory note" (MPN). An MPN is a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. The 1998 Amendments direct us to develop and require the use of an MPN for periods of enrollment beginning not later than July 1, 2000. Initially, not all borrowers will be permitted to receive multiple loans under the MPN. To receive multiple loans under an MPN, the borrower must attend a school that is authorized for multi-year use of the MPN. However, some schools that are authorized for multi-year use of the MPN may choose not to exercise this option. Further, a borrower who attends a school exercising the multi-year option may choose to receive and sign an MPN for each loan that he or she receives.

A more detailed discussion of the MPN is covered in §§ 682.401 and 685.402. Other conforming changes appear throughout the regulations.

Sections 682.204 and 685.203—Loan Limits

The proposed regulations would implement changes made by the 1998 Amendments to sections 428(b) and 428H(d) of the HEA that specify the annual loan limits for an academic year. The proposed regulations would reflect these changes and modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length. The proposed regulations also specify annual loan limits for non-degree preparatory and teaching credential coursework. The 1998 Amendments simplified the proration calculation but did not change the conditions under which proration would be required.

Reduced Loan Limits

The proposed regulations would implement changes in the HEA that altered the method of calculating statutorily mandated reduced annual loan limits for borrowers enrolled in a program of undergraduate education that is less than one academic year. Prior to enactment of the 1998 Amendments, the HEA included specific loan limits that applied to these borrowers. The 1998 Amendments eliminated these specified loan amounts and replaced them with a calculation that reduces the loan amount proportionally based on the relationship of the program length to the length of the academic year. The HEA now provides that the maximum amount that a borrower enrolled in a program of undergraduate education that is less than one academic year may receive is the amount that bears the same ratio to the statutory annual maximum (\$2,625 for subsidized and unsubsidized, and \$4,000 for additional unsubsidized) as the program of study in which the borrower is enrolled bears to one academic year.

The 1998 Amendments also clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA, which contains a minimum standard of instructional time and academic coursework. The committee agreed that students enrolled in a program that does not meet one or both of the statutory minimum standards for an academic year not receive a full annual loan amount. After some discussion, the

committee agreed that the draft regulations should propose that the calculation of the proportional loan amount for a program of study that is less than a full academic year should use the ratio that is the lesser of the ratio of academic credit or number of weeks to the academic year.

For prorating loan limits for remaining balances of programs that are equal to or greater than an academic year in length, the committee agreed that a proportional loan amount calculated as simply a ratio of the academic credit to the academic year could be used. This is because these programs already meet the two standards (instructional weeks or academic credit) for an academic year.

Preparatory Coursework

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount in the FFEL and Direct Loan programs that a borrower may receive if he or she is enrolled in preparatory coursework required for admission into an undergraduate degree or certificate program or for enrollment in a graduate or professional degree or certificate program. The loan limits specified in the statute are the same as the limits previously specified in the Department's guidance for loans made to these borrowers. The proposed regulations provide that the maximum loan amount that such a borrower may receive for coursework necessary for admission into an undergraduate program is \$2,625 in subsidized and unsubsidized loans and, for independent students and certain dependent students, an additional \$4,000 in unsubsidized loans. In the case of a borrower who has obtained a baccalaureate degree, the proposed regulations provide that the maximum amount a borrower may receive for coursework necessary for admission into a graduate or professional program is \$5,500 in subsidized and unsubsidized loans and \$10,500 (less any subsidized amount borrowed) in additional unsubsidized loans.

Teaching Credentials

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount that a borrower may receive for enrollment in postbaccalaureate coursework necessary for a professional credential or teacher certification by a State for teaching in elementary or secondary schools. The HEA specifies that such a borrower may receive an annual limit of up to \$5,500 in subsidized and unsubsidized loans and

\$5,000 in additional unsubsidized loans for such coursework. The loan limits specified in the statute are the same limits as those previously specified in the Department's guidance for loans made to these borrowers following enactment of section 484(b)(4) of the HEA in 1992, which made these borrowers eligible for loans.

Sections 682.207, 682.604, 685.301, and 685.303—Disbursement Exemptions

The proposed regulations would implement changes made to section 428G(a)(3), (b)(1), and (e) of the HEA by the 1998 Amendments that authorize exemptions to the requirements for disbursing loan proceeds to FFEL and Direct Loan program borrowers. These exemptions apply to FFEL and Direct Loan program schools that meet specific criteria.

Multiple Disbursement Exemption

Generally, an FFEL or Direct Loan program loan must be disbursed in more than one installment. As a result of the 1998 Amendments, loan proceeds may now be disbursed to the borrower in one installment if—

- The loan period is equal to or shorter than one semester, one trimester, one quarter, or four months; and
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available.

Loan proceeds to cover the cost of attendance in a study abroad program also may be disbursed in one installment if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

Delayed Delivery/Disbursement Exemption for First-Year, First-Time Borrowers

In general, FFEL and Direct Loan program schools must delay delivery or disbursement of an installment of loan proceeds to first-year, first-time borrowers until 30 days after the first day of the student's program of study. First-year, first-time borrowers are students who are enrolled in their first year of an undergraduate program of study and who have not previously received an FFEL Subsidized Stafford, FFEL Unsubsidized Stafford, Federal Supplemental Loans for Students (SLS), Direct Subsidized, or Direct Unsubsidized loan.

Under the proposed regulations and in accordance with the statute, an FFEL

or Direct Loan program school may deliver or disburse loan proceeds to first-year, first-time borrowers without the 30-day delay if the school—

- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available or
- Is an eligible postsecondary home school certifying or originating a loan to cover the cost of attendance in a study abroad program; and
- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

A school's eligibility for these exemptions is based on the school's published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. To be eligible, the school must have a published rate calculated for each of the required number of years. For example, a new school that has only one published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent and wants to disburse a one-semester loan in a single installment would not qualify for the multiple disbursement exemption.

Annually, the Secretary notifies schools of their published FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. Under the proposed regulations, schools that no longer qualify for the exemptions would have to cease certifying or originating loans based on the exemptions beginning 30 days after the school received the Department's notice that it no longer qualifies for the exemptions. A school would be responsible for certifying or originating loans in accordance with the applicable regulations and its default rate, and FFEL lenders and guaranty agencies would be able to rely upon the school certifications.

Sections 682.209 and 685.207—Grace Period for Military Service

The proposed regulations would implement changes made by the 1998 Amendments to section 428(b)(7)(D) of the HEA that authorize the exclusion of certain periods of service in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers. To qualify, a borrower must be—

- A member of a reserve component of the Armed Forces named in section 10101 of Title 10 of the United States Code; and

- Called or ordered to active duty for a period of more than 30 days.

For borrowers who qualify, the following periods would be excluded from the six-month grace period for the borrower's subsidized and unsubsidized student loans:

- Periods during which a borrower serves in the Armed Forces; and
- The period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from service.

The committee discussed the incidence of a borrower serving more than one period of active duty. To ensure that borrowers receive the benefit each time they serve, the committee agreed that the proposed regulations should provide that each period that coincides with the borrower's loans being in an in-school or grace status is subject to the three-year limit.

The committee also discussed the fact that the time period in which a borrower needs to re-enroll in the "next available regular enrollment period" after returning from service in the Armed Forces may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program. As a result of these discussions, the committee agreed that the proposed regulations should require that all borrowers must re-enroll within 12 months of their return from active duty service. Borrowers would not be required to re-enroll in the same program in which they were enrolled at the time they were called or ordered to active duty.

The proposed regulations also would provide that borrowers who were in their grace period when called or ordered to active duty receive a full six-month grace period when they return from service in the Armed Forces. The committee believed that this provision would be in the best interest of borrowers—many of whom must secure jobs upon their return.

Sections 682.210 and 685.204—Deferment

The proposed regulations would implement changes made by the 1998 Amendments to requirements for deferments in section 428(b)(1) of the HEA. These changes affect the qualifications for the in-school and unemployment deferments.

In-School Deferment

Prior to enactment of the 1998 Amendments, certain FFEL Program borrowers who were enrolled less than full time had to borrow a loan for the

same period of enrollment for which the borrower was seeking an in-school deferment in order to qualify for the deferment. These "new borrowers" are defined for deferment purposes, as those who did not have an outstanding balance on an FFEL loan made prior to July 1, 1987 and who received an FFEL loan on or prior to June 30, 1993. The 1998 Amendments eliminated the requirement that the borrower take out a loan to qualify for the deferment. The proposed regulations would provide these FFEL borrowers enrolled at least half time at an eligible school may qualify for an in-school deferment.

The 1998 Amendments also changed the HEA to specify three methods by which FFEL lenders and the Secretary will determine a borrower's eligibility for an in-school deferment. The proposed regulations would provide that a borrower may be determined eligible for an in-school deferment when—

- The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender or the Secretary for a Direct Loan;
- The borrower's FFEL lender or the Secretary for a Direct Loan receives either a newly completed loan application or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or
- The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

Before the 1998 Amendments, a borrower could only receive an in-school deferment by submitting a request and the required verification of eligibility to the borrower's FFEL lender or the Secretary for a Direct Loan. The Department's current regulations allow FFEL lenders to determine a borrower's eligibility for an in-school deferment when they received new loan eligibility information from a borrower's school.

The statute requires an FFEL lender, or the Secretary for a Direct Loan, to notify a borrower when granting an in-school deferment based on new loan eligibility or student status information. The committee agreed that to provide borrowers with the opportunity to make an informed choice, the proposed regulations would provide that this notice must inform the borrower of the option to make interest payments on an unsubsidized loan during the deferment period and of the opportunity to cancel the deferment and continue paying on

the loan. The proposed regulations also provide that, in the case of a borrower who chooses to cancel the deferment and continue paying on the loan, the borrower may exercise his or her option to avoid capitalization of unpaid interest by making the principal and interest payments that were deferred.

Unemployment Deferment

Prior to the 1998 Amendments, to qualify for additional periods of an unemployment deferment after an initial six months, FFEL and Direct Loan program borrowers were required to submit a written certification that described the borrower's conscientious search for full-time employment. Alternatively, a borrower could provide comparable documentation the borrower had used to meet the requirements of the Unemployment Insurance Service.

The 1998 Amendments modified the HEA to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan, to qualify for initial and subsequent periods of an unemployment deferment. The proposed regulations reflect this change in the HEA. However, borrowers who are not eligible for unemployment insurance benefits may continue to provide written certifications to their FFEL lender or the Secretary.

As part of the discussions of this statutory change, the committee agreed that borrowers who are eligible for unemployment insurance benefits should not have to receive those benefits to qualify for an unemployment deferment. The proposed regulations reflect this standard of eligibility. The committee believed that the statute's goal was to reduce the burden on the borrower. Therefore, the committee agreed that a borrower should simply submit documentation proving that he or she is eligible to receive the unemployment insurance benefits for the period during which the borrower is requesting an unemployment deferment.

The committee also discussed the minimum documentation that a borrower should be required to provide. Some negotiators suggested that the documentation should include, at a minimum—

- The borrower's personal identifying information (i.e., name, address, and social security number); and
- The effective dates of the borrower's eligibility to receive unemployment insurance benefits.

However, following these discussions, the committee did not include these

requirements in the proposed regulations. The Secretary invites comment as to whether these items should be included in the final regulations.

Sections 682.211 and 685.205—*Forbearance*

The proposed regulations would implement changes to sections 428(c)(3) and 428H(e) of the HEA made by the 1998 Amendments. These changes remove the requirement that forbearance requests be in writing and add a new basis for granting a forbearance.

Under new sections 428(c)(3)(D) and 428H(e)(7) of the HEA, an FFEL lender, and the Secretary for a Direct Loan, may grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan. The purpose of this forbearance period is to allow time for FFEL lenders and the Secretary to collect and process documentation supporting these requests. Lenders and the Secretary may not capitalize interest that accrues during this forbearance period.

Sections 682.401 and 685.402—*Multi-Year Use of the Master Promissory Note*

The proposed regulations would modify §§ 682.401 and 685.402 to reflect the adoption of an MPN in the FFEL and Direct Loan Programs. Even before enactment of the 1998 Amendments, the Department, in consultation with the financial aid community, developed an MPN and a process for multi-year use of the MPN for FFEL and Direct Stafford loans. The Department's adoption of an MPN was confirmed by changes made to section 432(m)(1)(D) of the HEA by the 1998 Amendments. The proposed regulations would further this process by stating the requirements that a school must meet to be authorized for multi-year use of the MPN.

Under the proposed regulations, a school would have to be authorized by the Secretary to use a single MPN as the basis for multiple loans obtained by a particular borrower. A borrower attending a school that is not authorized by the Secretary for multi-year use of the MPN would have to complete a new MPN for each subsequent loan.

Under the proposed regulations, to be eligible for multi-year use of the MPN, a school would have to be a four-year or graduate/professional school, or meet criteria or be otherwise designated at the sole discretion of the Secretary. The school also would have to meet the following requirements:

- Not be subject to an emergency action or a proposed or final limitation,

suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA; and

- Meet other performance criteria determined by the Secretary.

The proposed regulations provide that the Secretary may designate additional institutions to use the multi-year feature of the MPN, in his sole discretion. It is our current intention to allow schools (other than four-year and graduate/professional schools) to request approval for use of the multi-year feature of the MPN at any time after the publication of the final regulations. Any such requests will be considered at the Secretary's sole discretion. At some point after final regulations are published, it is also our intention to establish and announce criteria and a process that will be used by the Department for consideration of requests for approval of the use of the multi-year feature of the MPN by schools other than four-year and graduate/professional schools.

We believe the proposed regulations would give the Secretary adequate flexibility to implement multi-year use of the MPN.

The adoption of the MPN for multi-year use will require significant changes to the systems and procedures currently in place for lenders, schools, servicers, and the Department. It will also require increased efforts by all parties to ensure that borrowers understand their obligations and rights under the new note. In light of these changes, the Secretary believes it is appropriate to phase in the multi-year use of the MPN. Accordingly, at this time, the Secretary will authorize multi-year use of the MPN only for four-year or graduate/professional schools that are not subject to an emergency action or a proposed or final limitation, suspension, or termination action. However, it is the Secretary's ultimate goal to allow multi-year use of the MPN by all schools that meet the eligibility requirements.

Consistent with the statutory requirements, the proposed regulations would require schools that are authorized for multi-year use of the MPN to develop and document a confirmation process or processes along with the FFEL lender, or the Secretary for Direct Loans, to ensure that the borrower wants subsequent loans.

The negotiators agreed that a confirmation process is required now and that schools and lenders may follow the guidance in the Department's Dear Colleague Letters—GEN-98-25, November 1998 and GEN-99-08, February 1999—in developing and documenting that confirmation process. As technology develops and different

methods of confirmation are tested, the Secretary will continue to issue guidance regarding confirmation methods. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedures Act. Ultimately, after evaluating various confirmation processes, the Secretary plans to develop regulations governing the confirmation process.

It is the Secretary's goal to maintain and enhance a borrower's control over the lending process. To that end, the Secretary intends to work with students, schools, lenders, guaranty agencies, and other interested parties to develop improved technologies and processes that will enable borrowers to further control the lending process. These efforts will include the development of borrower-control mechanisms such as the—

- Use of electronic signatures to confirm acceptance of loans;
- Use of PIN numbers to access and confirm loan records and amounts; and
- Adoption of on-line or other initial counseling that includes acknowledgment of the loan.

Sections 682.402, 685.212, and 685.215—Unpaid Refund Discharge

The proposed regulations would implement changes made to section 437(c)(1) of the HEA by the 1998 Amendments. These changes provide for the discharge of the amount of a borrower's FFEL or Direct Loan program loan that should have been refunded by the borrower's school. This discharge is available for loans disbursed on or after January 1, 1986. Under the proposed regulations, the loan discharge would be available to any borrower whose school failed to refund loan proceeds to an FFEL lender or the Secretary on behalf of a borrower who was entitled to a refund. While technically the return of Title IV loan proceeds that have been applied to the account of a borrower who never attended a school does not meet the definition of a Title IV refund, the committee agreed to be fair to borrowers in this situation, and propose to make these borrowers eligible for the unpaid refund discharge.

The rules proposed by the committee for unpaid refund discharges are generally consistent with the rules governing application for closed school and false certification discharges. The committee believed that adopting consistent rules would help assure consistent administration and fair treatment for borrowers. The proposed regulations therefore would require FFEL and Direct Loan program borrowers to submit a complete

application for an unpaid refund discharge. However, the committee agreed that an application should not be required in all cases. The proposed regulations would allow the Secretary or the guaranty agency, with the approval of the Secretary, to discharge a loan based on information in his/its possession that shows that the borrower is eligible for a discharge. Under the proposed regulations, collection efforts on the loan would cease from the time the borrower submits the application until such time as a determination is made as to the borrower's eligibility for the discharge.

Under the proposed regulations, the borrower would have to agree to provide, upon request, any additional documentation reasonably available to the borrower but not submitted with the application, to demonstrate that the borrower meets the qualifications for the discharge. Examples of documentation reasonably available to the borrower include copies of the tuition bill, the enrollment contract, the school's catalog or other documents stating the school's refund policy, and any correspondence from the school specifying the borrower's withdrawal date or the amount of the refund owed.

Unpaid refund discharge requests will involve both schools that have closed and schools that are open. However, the issues presented by those situations differ. Accordingly, the proposed regulations provide different procedures for closed and open school situations.

Closed School Situations

Under the proposed regulations, if the school has closed, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges based on a complete application from the borrower or, under limited circumstances, information otherwise available to the guaranty agency or to the Secretary.

Open School Situations

Under the proposed regulations, if the school is open, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges if—

- The borrower no longer attends the school that owes the refund;
- The borrower has been unable to resolve the unpaid refund with the school; and
- The guaranty agency or the Secretary has been unable to resolve the unpaid refund with the school within 120 days from the date the borrower

submits a complete application for the unpaid refund discharge.

Under the proposed regulations, the guaranty agency or the Secretary would notify the school of the receipt of an unpaid refund discharge application. Within 60 days of the date of this notice, the school would have to submit documentation demonstrating that the school either made the refund, or is not required to make the refund.

In both closed and open school situations, the proposed regulations would provide that the guaranty agency or the Secretary would determine the amount eligible for discharge based on

information showing the refund amount that was not made or by applying the appropriate refund formula to data that the borrower provides or that is otherwise available to the guaranty agency or to the Secretary. If this information is not available, the guaranty agency or the Secretary would use one of two formulas to determine the amount eligible for discharge. Two formulas must be considered because of changes made to the HEA by the 1998 Amendments that modify the calculation of Title IV refunds. The effective date for the new refund

calculation is October 7, 2000 and that date will be used to determine which of the following formulas applies.

For Students Who Fail To Attend, Withdraw, or Are Terminated Before October 7, 2000

To determine unpaid refund discharges for borrowers in this group, the guaranty agency or the Secretary would calculate and discharge the lesser of the institutional charges unearned by the school or the loan amount. The amount of institutional charges unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \text{Institutional Charges for Loan Period}$$

For Students Who Fail To Attend, Withdraw, or Are Terminated On or After October 7, 2000

To determine unpaid refund discharges for borrowers in this group,

a guaranty agency or the Secretary would calculate and discharge the loan amount unearned by the school. The loan amount unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \begin{matrix} \text{Title IV Grants/Loans Student Received (if known)} \\ \text{or} \\ \text{Loan Amount} \end{matrix}$$

The refund resulting from the above calculation may never exceed the loan amount, including accrued interest and other charges.

Sections 682.604 and 685.304—Counseling Borrowers

The proposed regulations would reflect changes made to section 485(b)(2)(C) of the HEA by the 1998 Amendments clarifying that schools may use electronic means to provide exit counseling to FFEL and Direct Stafford loan borrowers. The statutory change addresses only exit counseling because initial counseling is not required by the HEA. However, because electronic counseling gives flexibility to both borrowers and schools, the committee agreed that the proposed regulations should also permit schools to use electronic means to provide initial counseling to borrowers. This change also would conform to the guidance issued by the Department before enactment of the 1998 Amendments, which permitted schools to use electronic means to provide initial and exit counseling to FFEL and Direct Loan program borrowers. The proposed regulations also would update the counseling elements to require schools to include information about

two new statutory initiatives—the MPN and the availability of the Department's Student Loan Ombudsman's office.

Use of Electronic Means To Provide Counseling

The proposed regulations make changes based on the statutory authorization for schools to use electronic means to provide counseling to borrowers. Under the proposed regulations, FFEL and Direct Loan program schools would be authorized to provide initial and exit counseling to borrowers—

- In person;
- By audiovisual presentation; or
- By interactive electronic means.

In any case, schools would continue to be required to ensure that an individual with knowledge of Title IV programs is reasonably available shortly after the counseling to answer borrowers' questions. The proposed regulations would also continue to allow schools to provide written counseling materials to borrowers who are enrolled in a correspondence program or a study abroad program approved for credit at a postsecondary home school. In the case of a borrower who withdraws from school without the school's prior knowledge or who fails to

complete the exit counseling as required, the proposed regulations would now require a school to provide exit counseling through interactive electronic means or by mailing written counseling materials to the borrower within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

The committee members pointed out that there are different electronic means by which schools may provide initial and exit counseling to FFEL and Direct Loan borrowers. Moreover, new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations would not prescribe specific electronic means by which schools may provide initial and exit counseling. Rather, the proposed regulations would specify that the electronic means the school uses must be interactive, which at a minimum, requires schools to take reasonable steps to ensure that each borrower receives the counseling

materials and participates in and completes the counseling. For example, simply ensuring that the student received and "opened" an electronic message that contained loan counseling information would not be sufficient.

The proposed regulations would continue to require schools to maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, in recognition of the unique features of electronic counseling, the proposed regulations would eliminate the requirement that a school maintain the documentation in a borrower's file. For schools that send initial and exit counseling materials by e-mail or other electronic means, the school's documentation would have to include proof that the borrower received the materials. This does not mean that the school must receive a personal response from the borrower, rather the school can accept an electronic "receipt", or other comparable response, that is a feature of most electronic mail systems. Proof of receipt would not be required if schools send the materials via U.S. mail.

New Counseling Elements

The proposed regulations also would require that, as part of initial and exit counseling, schools include information about two new initiatives authorized by the 1998 Amendments. The committee believed that these statutory initiatives are important for borrowers to be informed of during the appropriate counseling session. Under the proposed regulations, schools would have to—

- Explain the use of an MPN during the initial counseling; and
- Review information on the availability of the Department's Student Loan Ombudsman's office during the exit counseling.

The committee also agreed that borrowers should be informed of the availability of the Department's Student Loan Ombudsman's office by FFEL lenders and guaranty agencies at specific points in the life of the loan. The agreed-upon points at which information on the Ombudsman's services would be provided are included and discussed in the NPRM of Committee I.

Section 685.300—Choice of Loan Programs

The 1998 Amendments modified section 498(b) of the HEA to require that the application for schools to participate in the Title IV programs provide schools the option to participate in one or more of the loan programs under the FFEL and Direct Loan programs. As a result of

this change, a school may choose to participate in either the subsidized or the unsubsidized Stafford loan programs, or both. A school also has the option to choose whether or not to participate in the PLUS loan program. The proposed Direct Loan Program regulations contain a conforming change in 685.300 to reflect this statutory change. The prior FFEL Program regulations that provided for agreements between an eligible school and the Secretary for participation in the FFEL Program were removed and reserved in regulations published on July 1, 1995. Therefore, a comparable conforming change is not proposed for those regulations. Notwithstanding that fact, FFEL schools also have the option to decide in which FFEL loan programs they wish to participate.

The committee considered whether a student attending a school that chose not to participate in the PLUS loan program would be automatically eligible to borrow additional unsubsidized FFEL or Direct Loan program funds as the law provides for dependent students whose parents are unable to borrow under the PLUS loan program. After much discussion, the committee agreed that the proposed regulations should not permit a dependent student attending such a school to be eligible to receive additional unsubsidized FFEL or Direct Loan program funds based on the school's decision not to participate in the PLUS loan program. Some negotiators agreed with the Department's belief that this went beyond the scope of the intent of the law.

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.

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.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed

thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

Summary of Potential Costs and Benefits

The following is an analysis of the costs and benefits of the most significant provisions of the proposed regulations, all of which reflect statutory changes included in the 1998 Amendments. There are additional proposed changes including conforming and minor technical changes intended to further improve the administration of the FFEL and Direct Loan programs, which are discussed elsewhere in this preamble under the heading *Proposed Regulatory Changes*. The Department does not consider there to be significant costs associated with those provisions.

Interest Rates

The 1998 Amendments changed the basis for calculating borrower interest rates on new Stafford and unsubsidized Stafford loans from a security of comparable maturity plus 1 percent for both in-school and repayment periods, to the 91-day T-bill interest rate plus 1.7 percent for in-school, grace, and deferment periods, and the 91-day T-bill interest rate plus 2.3 percent for repayment periods. These changes are incorporated in proposed 682.202. At the time the 1998 Amendments passed, the 91-day T-bill interest rate plus 2.3 percent was roughly equal to the 10–20 year bond interest rate plus 1 percent; as a result this change had no financial impact for loans in repayment. The lower in-school costs of unsubsidized Stafford loans result in significant student benefits. The cost to loan holders is estimated to be \$56 million for loans originated in FY 2000.

The interest rate on FFEL Consolidation loans with applications received by the lender on or after October 1, 1998, was changed to the lesser of the weighted average of interest rates on the loans consolidated, rounded to the nearest higher 1/8th of 1 percent, or 8.25 percent. The cost to loan holders for the lower borrower interest rate is estimated to total \$52 million for FFEL Consolidation loans originated in FY 2000.

Capitalization

Section 682.202 also reflects the changes made to the HEA that govern the frequency with which FFEL loan holders may capitalize accrued interest. In addition, they clarify that these frequency of capitalization rules apply

to subsidized loans as well as to unsubsidized loans. In accordance with the 1998 Amendments, a loan holder may only add accrued interest to the principal when a borrower enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This provision would benefit borrowers and would result in an estimated cost to loan holders of \$45 million for loans originated in FY 2000. Of this amount, \$354,000 is the cost of including subsidized loans.

FFEL Extended Repayment Plan

Section 682.209 incorporates the new FFEL extended repayment plan for new borrowers with outstanding FFEL Program loans exceeding \$30,000 which would allow those borrowers to repay

their loans, including FFEL Consolidation loans, over a period not to exceed 25 years with fixed or graduated repayment amounts. Assuming the same proportion of FFEL borrowers take advantage of these provisions as in the Direct Loan Program, lender's interest receipts may increase by as much as \$55 million over the 30-year life of a loan. This increased revenue should more than offset any additional administrative costs lenders may incur. Further, it is likely that many or most small lenders will sell loans in the extended repayment plan to larger loan holders in the secondary markets.

Bankruptcy Discharge

Section 682.402 reflects changes made to the Bankruptcy Code by the 1998 Amendments that eliminates the seven-

year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. This change limits the FFEL Program loans that may be discharged in bankruptcy to those that qualify on grounds of undue hardship. The discharge of fewer loans would save the Federal Government an estimated \$66 million for loans originated in FY 2000.

Overall, these regulations would result in savings to borrowers and the Federal Government, and would have a cost to loan holders in the FFEL Program as shown in the table below. These costs are a direct result of changes made to the HEA by the 1998 Amendments and have been implemented prior to the development of these proposed regulations.

FY 2000 COSTS
[In millions of dollars]

Provision	Federal government	All Borrowers	FFEL loan holders
Interest Rate Reduction		- 108	108
Capitalization Upon Repayment		- 45	45
Limit Bankruptcy Discharge	- 66	66	
Total	- 66	- 87	153

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, § 682.202 Permissible charges by lenders to 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 persons 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.

Entities affected by these regulations are institutions of higher education and loan holders that participate in the Title IV, HEA programs, and individual FFEL and Direct Loan borrowers. Institutions would experience positive impacts from these proposed regulations. Individuals are not considered small entities for this purpose. Nearly all of the roughly 4,800 participating FFEL loan holders would be defined as small entities under U.S. Small Business Administration (SBA) guidelines. (Student loans are originated by lenders and are often sold in packages to larger secondary market participants.) Small lenders originate only 16 percent of new loans. The economic impact for loans originated in FY 2000 would be \$24 million or

approximately \$5,000 per average lender.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Sections 682.102, 682.200, 682.402, 682.604, 682.610, 685.215, and 685.304 contain information collection requirements and require OMB approval. Sections 682.210(h), 682.301(b), 682.401(b)(5), 685.204(b) and 685.205 are affected by the NPRM and require continued approval by OMB. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department 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 and William D. Ford Federal Direct Loan Program.

Section 682.102—Obtaining and Repaying a Loan

We are proposing to require the use of the Free Application for Federal Student

Aid (FAFSA), beginning in academic year 1999–2000, as the application for subsidized and unsubsidized Stafford loans, as required by the 1998 Amendments. Borrowers would no longer be required to complete a separate loan application. This provision would reduce the burden hours required for a lender's processing of the loan application. The Department currently has the burden hours for this provision accounted for under 682.401(b)(4) and approved under OMB control numbers 1840–0742 and 1840–0717. We will submit a change request to reflect the reduction in burden hours to OMB.

Section 682.200—Definitions

We are proposing to change the definition of "Default" by increasing the number of days a borrower may be delinquent before an FFEL Program Loan becomes defaulted from 180 days to 270 days for loans repayable in monthly installments, and from 240 days to 330 days for loans repayable less frequently than monthly installments. We anticipate no change in burden hours as a result of this change.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

We are proposing changes that would provide for the discharge of all or a portion of a borrower's FFEL Program loan if a school failed to refund loan proceeds to the lender on behalf of a borrower who withdrew or was terminated from the school within a timeframe that entitled the borrower to a Title IV refund. This proposed statutory change would be retroactive to loans disbursed on or after January 1, 1986. The proposed unpaid refund discharge would involve both schools that have closed and schools that are open. Annual reporting burden hours for this collection of information for processing unpaid refund discharge payments is estimated to average one hour per response for 500 borrowers, equaling a total of 500 new burden hours. This figure is based on unpaid refund discharge payments for an estimated 400 borrowers in closed school situations and an estimated 100 borrowers in open school situations.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers

We are proposing to change the regulations to clarify that schools are not restricted to providing in-person exit counseling to borrowers, but may use interactive electronic means to

conduct entrance and exit counseling for borrowers. Our recalculation of burden hours also reflects the streamlining of an in-person counseling since the inception of the process in 1989. Annual public reporting burden for the collection of information for initial counseling is estimated to average 0.25 hour per response for 5,899 FFEL Program schools times eight sessions per school for a total of 11,798 burden hours. This equals a decrease of 4,514 burden hours. Annual public reporting burden for the collection of information for exit counseling is estimated to average 0.25 hour per response for 836,124 students for a total of 209,031 burden hours. This equals an increase of 77,814 burden hours over the current inventory. The large increase results from the large increase of respondents since the last calculation of these numbers.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

This provision would require a school to maintain documentation of any confirmation process or processes the school may have used for borrowers who use the multi-year feature of the Master Promissory Note. This provision has information collection requirements that affect schools. Annual reporting burden for this collection of information is estimated to average 20 minutes to prepare a document describing the school's confirmation process or processes for MPN multi-year borrowers. There are 5,899 FFELP schools. This equals a total of 1,947 new burden hours.

Section 685.215—Unpaid Refund Discharge

This proposed provision would allow a borrower to have all or a portion of the borrower's loan discharged if a school failed to make a refund. The provision has information collection requirements that would affect borrowers and schools. In the majority of cases, borrowers would be required to complete a form to apply for an unpaid refund discharge. This form will be developed following publication of the final regulations and, when cleared, will account for the burden to borrowers. In cases in which a borrower applies for an unpaid refund discharge based on the actions of a school that is open, schools would need to respond to an inquiry by the Department as to the unpaid refund allegation. The Department estimates that 100 Direct Loan borrowers will submit unpaid refund discharge applications and that 25% of those applications would require schools that

are open to spend one hour to respond to the allegations for an estimated total of 25 new burden hours.

Section 685.304—Counseling Borrowers

This proposed provision would revise existing regulations to allow schools to provide initial and exit counseling to borrowers by one of three methods: in person, by audiovisual presentation, or by interactive electronic means. Schools would continue to be affected by the information collection requirements in the existing regulations—they would have to collect and maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, with the authorization for providing initial and exit counseling through electronic means, the time required for schools to collect and maintain the information would be reduced. For initial counseling, the Department estimates that 1,230 Direct Loan schools will conduct an average of eight counseling sessions and spend .25 hour per session collecting and maintaining the required documentation for a total of 2,460 burden hours. For exit counseling, the Department estimates that Direct Loan schools will spend .25 hour collecting and maintaining the required documentation for each of 836,124 borrowers who must complete exit counseling for a total of 209,301 burden hours. The combined burden hours for the information collection requirements associated with initial and exit counseling equal 211,491. While this is an increase of 182,097 burden hours to the 29,394 burden hours reported in the Department's most recent inventory, the increase is due to the growth of the Direct Loan Program.

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 representatives named in the ADDRESSES section of this preamble.

We consider your comments in these proposed collections of information—

- 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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(Catalog of Federal Domestic Assistance Numbers 84.032 Federal Family Education Loan Program, and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

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

Dated: July 22, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 682 and 685 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 682.100 paragraph (a)(4) is amended by removing “other loans, including,”; and by adding “Loans for Disadvantaged Students (LDS)”, after “(HPSL)”.

3. Section 682.102, paragraph (a), is revised; paragraph (b) is removed and reserved; and paragraph (d) is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), or contacting the school, lender or guarantor. The school determines and certifies the student’s eligibility for the loan. Prior to loan disbursement, the lender obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

(d) *Consolidation loan application.* To obtain a Consolidation loan, a borrower completes an application and submits it to the lender holding the borrower’s FFEL Program loan. If the borrower has multiple holders of FFEL Program loans, or if the borrower’s single loan holder declines to make a Consolidation loan, or declines to make one with income-sensitive repayment, the borrower may submit the application to any lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

4. Section 682.200(b) is amended as follows:

A. By amending the definitions of *Default* by revising paragraphs (1) and

(2), *Estimated financial assistance* by revising paragraphs (1)(i) (2)(i)(B) and (C), (2)(ii), and by adding (2)(iii).

B. By revising the definition of *Holder*.

C. In the definition of “Lender,” by revising paragraph (5)(i) and by renumbering the second paragraph (5) as paragraph (6).

D. By adding a new definition “Master promissory note (MPN)” in alphabetical order.

E. In the definition of “Repayment period,” in paragraph (1), by adding “or 25 years under an extended repayment schedule,” after “10 years”; in paragraph (2), by adding “or 25 years under an extended repayment schedule,” after “10 years”.

§ 682.200 Definitions.

* * * * *
Default.

* * * * *

- (1) 270 days for a loan repayable in monthly installments; or
- (2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

- (1) * * *
- (i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 and veterans’ educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

* * * * *

- (2) * * *
- (i) * * *
- (A) * * *
- (B) PLUS loan amounts; or
- (C) Private and state-sponsored loan programs; and
- (ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined; and
- (iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans’ educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender.

* * * * *

* * * * *

(5) * * *

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

* * * * *

Master promissory note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

* * * * *

5. Section 682.201 is amended as follows:

- A. By revising paragraph (a)(2).
- B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing “(c)(1)(vi)”, and by adding in its place, “(c)(1)(iv)”; and by removing paragraphs (c)(3) and (c)(4).
- C. By adding a new paragraph (d).
- D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

- (i) Receive a determination of need for a Consolidation Stafford loan; and
- (ii) If the determination of need is in excess of \$200, have made a request to a lender for a subsidized Stafford loan;

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

- (i) Is, on the loans being consolidated—
 - (A) In a grace period preceding repayment;
 - (B) In repayment status;
 - (C) In a default status on a title IV loan and has either made satisfactory repayment arrangements as defined in 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in 682.209(a)(6)(viii);
 - (D) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or
 - (E) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;
- (ii) Certifies that no other application for a Consolidation loan is pending;
- (iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds the outstanding loan of the borrower that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

- (1) Has multiple holders of FFEL loans; or
- (2) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

* * * * *

(d) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

- (1) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and
- (2) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made.

(e) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has other outstanding eligible loans that will be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, and 1091)

6. Section 682.202 is amended as follows:

A. In paragraph (a)(1)(i) by removing “If” and by adding, in its place, “For loans made prior to July 1, 1994, if.”

B. In paragraph (a)(1)(ii)(B) by adding “and prior to July 1, 1994,” after “October 1, 1992”.

C. In paragraph (a)(1)(iii)(A) by removing “evidencing the loan”.

D. In paragraph (a)(1)(iv) by adding “but before December 29, 1993,” after “October 1, 1992”.

E. By adding new paragraphs (a)(1)(v) through (a)(1)(viii).

F. In paragraph (a)(2)(iii), introductory text, by adding “and prior to July 1, 1994,” after “October 1, 1992”.

G. By adding new paragraphs (a)(2)(iv) and (a)(2)(v).

H. In paragraph (a)(3)(iii), introductory text, by removing “1992,” and by adding, in its place, “1992 and for loans made prior to July 1, 1994 for a period of enrollment that began prior to July 1, 1994”.

I. In paragraph (a)(4) by adding “(i)” at the beginning of the sentence before “A Consolidation”, by adding “made before July 1, 1994” after “loan”, by

designating paragraph “(i)” as “(A)”, by designating paragraph “(ii)” as “(B)”, by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

J. In paragraph (b)(1), by removing “paragraph (b)(2) of”; and by revising paragraph (b)(2).

K. In paragraph (b)(3) by removing “, except that capitalization”, and by adding in its place, “. Capitalization”.

L. By removing paragraph (b)(5).

M. By redesignating paragraph (b)(4) as paragraph (b)(5); and adding a new paragraph (b)(4).

N. By revising the newly redesignated paragraph (b)(5).

O. By revising paragraphs (c)(1) and (c)(2).

P. By redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(5) through (c)(7); and by adding new paragraphs (c)(3) and (c)(4).

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

- (A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or
- (B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for a period of enrollment that includes or begins on or after July 1, 1995, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

- (A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or
- (B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after

July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

* * * * *

(2) * * *

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

* * * * *

(4) * * *

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

* * * * *

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any

delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* A lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) May charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the minimum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to borrowers who qualify for a subsidized Stafford loan.

(ii) If a lender charges a lower origination fee pursuant to this subparagraph, the lender must charge all similarly situated borrowers the same origination fee.

(iii) A lender may use a comparable standard with the approval of the Secretary.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraphs (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4) For purposes of paragraphs (c)(1) and (c)(2) of this section, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. Any beneficial owner of loans, that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf, is considered the lender for this purpose.

* * * * *

7. Section 682.204 is amended as follows:

A. By revising paragraphs (a), (b), (c), (d), and (e).

B. In paragraph (f)(2)(i) by adding "the following", after "exceed".

C. In paragraph (f)(2)(ii) by adding "the following" after "exceed".

D. In paragraph (f)(2)(ii)(B) by removing "and", and by adding, in its place, "or".

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct

Stafford/Ford Loan Program may not exceed the following:
 (i) \$2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year

remaining, the amount that is the same ratio to \$2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the

amount that is the same ratio to \$2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any

academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$3,500 for a program whose length is at least a full academic year in length.
 (ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total

amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$5,500 for a program whose length is at least an academic year in length.
 (ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed \$8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the

total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed:

(i) \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic

year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed \$5,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) \$23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) \$65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of an

undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan

programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow

under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) \$4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$4,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year

of a program of undergraduate education may not exceed the following:
(A) \$4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to \$4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the

remainder of the program, may not exceed the following:
(i) \$5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed \$10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-

month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) \$4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is

enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, \$5,000.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/

Ford Loans and SLS Loans, but excluding the amount of capitalized interest may not exceed the following:

- (1) \$46,000 for an undergraduate student.
- (2) \$138,500 for a graduate or professional student.

* * * * *

8. Section 682.206 is amended as follows:

- A. By revising paragraph (a)(1);
- B. By removing "on the application form or data electronically transmitted to the lender" in paragraph (c)(1);
- C. By revising paragraph (c)(2);
- D. By removing paragraph (c)(3); and
- E. By revising paragraph (d)(1).

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to multiple loans made under an MPN).

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603 or the loan limits under § 682.204.

* * * * *

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

* * * * *

9. Section 682.207 is amended as follows:

- A. By revising the introductory text of paragraph (c);
- B. By removing paragraph (c)(5);
- C. By redesignating paragraph (d) as paragraph (f);
- D. By redesignating paragraph (c)(4) as paragraph (d);
- E. By adding a new paragraph (e); and
- F. By revising the newly redesignated paragraph (f).

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a

schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

(f)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(i) The school certified the borrower's loan eligibility and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and

(iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

(2) The lender must give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (f)(1) of this section at the time the lender sends the loan proceeds to the school.

10. Section 682.209 is amended as follows:

- A. By revising paragraph (a)(4).
- B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.
- C. By adding a new paragraph (a)(6).
- D. By revising the newly redesignated paragraph (a)(7)(iii).

E. In the newly redesignated paragraph (a)(7)(v)(A) by removing "income-sensitive or a graduated repayment", and adding, in its place, "income-sensitive, a graduated, or if applicable, an extended repayment".

F. By redesignating paragraph (a)(7)(ix) as paragraph (a)(7)(xi).

G. By adding new paragraphs (a)(7)(ix) and (x).

H. By revising paragraph (c)(1)(i).

I. By removing paragraph (h)(3); by redesignating paragraphs (h)(4), (h)(5), and (h)(6), as paragraphs (h)(3), (h)(4), and (h)(5), respectively; by revising the newly redesignated paragraph (h)(3); and by removing redesignated paragraph (h)(4)(ii) and redesignating paragraph (h)(4)(iii) as paragraph (h)(4)(ii).

§ 682.209 Repayment of a loan.

(a) * * *

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

* * * * *

(6) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(7) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, or if applicable, an extended repayment schedule.

* * * * *

(ix) Under an extended repayment schedule, the borrower may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

* * * * *

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, or extended repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least \$600 or the unpaid balance of all loans, including interest, whichever amount is less.

* * * * *

(h) * * *

(3) For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on defaulted loans.

* * * * *

11. Section 682.210 is amended as follows:

A. By revising paragraphs (a)(3), (a)(4), and (a)(6)(iv); in paragraph (a)(7) by removing “180- or 240-day” and adding, in its place, “270- or 330-day”.

B. By revising paragraph (b)(4).

C. By revising the heading in paragraph (c); by revising paragraph (c)(1), by redesignating paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and by adding a new paragraph (c)(2).

D. In redesignated paragraph (c)(3) by adding “or other form certified by the school” after “application”.

E. In redesignated paragraph (c)(4) by removing “SLS or PLUS” and adding, in its place, “SLS, PLUS or Consolidation loan” after “Stafford”.

F. In redesignated paragraph (c)(5), by adding “or PLUS (unless based on the dependent’s status)” after “Stafford”.

G. By revising paragraph (h).

§ 682.210 Deferment.

(a) * * *

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301 when the loan is made.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii) and (iii) of this section, the borrower must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

* * * * *

(6) * * *

(iv) In the case of a student deferment, the student’s anticipated graduation date as certified by an authorized official of the school and as updated by notice or SSCR update to the lender from the school or guaranty agency; or

* * * * *

(b) * * *

(4) For a “new borrower,” as defined in paragraph (b)(7) of this section,

deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

(c) *In-School deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower’s school about the borrower’s eligibility in connection with a new loan; or

(iii) The lender receives student status information indicating that the borrower’s enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii) or (iii) of this section and of the borrower’s option to pay interest that accrues on an unsubsidized Federal Stafford loan or to cancel the deferment and continue paying on the loan.

* * * * *

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification—

(i) Describing the borrower’s conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer’s address and phone number; and

(C) The name or title of the person contacted;

(ii) Setting forth the borrower’s latest permanent home address and, if applicable, the borrower’s latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower’s permanent or temporary address, specifying the agency’s name and address and date of registration.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(v) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.

* * * * *

12. Section 682.211 is amended as follows:

A. By revising paragraph (a)(4);

B. In paragraph (b) by removing “in writing”;

C. By adding a new paragraph (f)(9);

D. In paragraphs (h)(1) and (h)(2), by removing the word “written”; and

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B) to read as follows:

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(10) of this section, if payments of interest are forborne, they may be capitalized as provided in 682.202(b).

* * * * *

(f) * * *

(9) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower’s request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

13. Section 682.300 is amended by revising paragraph (a) to read as follows:

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

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a

portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301. This payment is known as interest benefits.

* * * * *

14. Section 682.301 is amended as follows:

- A. By revising paragraph (a)(3);
- B. By removing paragraph (a)(4); and
- C. By revising paragraphs (b) and (c).

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

- (i) On or after January 1, 1993 but prior to August 10, 1993;
- (ii) On or after August 10, 1993, but prior to November 13, 1997 only if the loan consolidates subsidized Stafford loans; and
- (iii) On or after November 13, 1997 for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

15. Section 682.401 is amended as follows:

- A. By revising paragraphs (b)(5)(i) and (ii);
- B. By redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively; and
- C. By adding a new paragraph (d)(4).

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her preferred lender on the promissory note or application, if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a Stafford or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) In the case of a PLUS loan request, information concerning the outstanding FFEL loans of the borrower and of the student, including any Consolidation loan used to repay a Stafford, SLS, or PLUS loan;

(C) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(D) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(4)(i) The Secretary authorizes the use of the multi-year feature of the Master Promissory Note (MPN)—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (i) of this section. The criteria to be used by the Secretary to prohibit use of the multi-year feature include the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A borrower attending a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each period of enrollment.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the student asking that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the original MPN was signed if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the student signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary.

* * * * *

16. Section 682.402 is amended as follows:

A. By revising the section heading; by revising paragraph (a)(1); in paragraph (a)(3), by adding "and as provided in paragraph (h)(1)(iv) of this section," after "section".

B. In paragraph (f)(1) by removing "(f) through (m)", and adding, in its place, "(h) through (k)"; by revising paragraph (f)(3); in paragraph (f)(5)(i)(B) by adding "before October 8, 1998" after "Code".

C. By revising paragraphs (g)(1)(i) and (ii).

D. In paragraph (h)(1)(i), by removing "paragraph (g)", and adding, in its place, "paragraph (h)"; by adding a new paragraph (h)(1)(iv);

E. By revising paragraph (i)(1); and by removing paragraph (i)(3) in its entirety.

F. In paragraph (j)(1)(ii), by removing "(B)"; and by revising paragraph (j)(1)(iii).

G. By revising paragraph (k)(1)(i)(A).

H. By redesignating paragraphs (l) and (m) as paragraphs (r) and (s); and by adding new paragraphs (l) through (q).

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

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

* * * * *

(f) * * *

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

* * * * *

(g) * * *

(1) * * *

(i) The original promissory note or a copy of the promissory note certified by the lender as true and accurate.

(ii) The loan application, if a separate loan application was provided to the lender.

* * * * *

(h) * * *

(1) * * *

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

* * * * *

(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information if the petition for relief in bankruptcy was filed prior to October 8, 1998, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim; and

(ii) In all other cases, determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the agency determines that repayment would not constitute an undue hardship, the agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iv) The agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

* * * * *

(j) * * * (1) * * *

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

* * * * *

(l) *Unpaid refund discharge.*

(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower has ceased to attend the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the borrower submits a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination

fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in

accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) The agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in the initial determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for the period during which collection activity was suspended. The holder may capitalize any interest accrued and not paid during the review period in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward

documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency—* (1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October

7, 2000, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

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

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

* * * * *

17. Section 682.406 is amended by adding a new paragraph (c) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

* * * * *

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

18. Section 682.409 is amended as follows:

- A. By revising paragraph (c)(2);
- B. In paragraph (c)(4)(i) by adding "original or a true and exact copy of the" after "The";
- C. In paragraph (c)(4)(iv) by adding ", if a separate application was provided to the lender", after "application";
- D. In paragraph (c)(5), and by removing "certified" after "submit" and by removing "if no originals exist" after "originals".

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

* * * * *

- (c) * * *
- (2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

* * * * *

19. Section 682.414 is amended, as follows:

- A. In paragraph (a)(4)(ii)(A) by adding "if a separate application was provided to the lender" after "application";
- B. In paragraph (a)(4)(ii)(B) by removing ", including the repayment instrument" after "note";
- C. In paragraph (a)(4)(ii)(J) by removing "and" at the end of sentence;
- D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L);
- E. By adding a new paragraph (a)(4)(ii)(K);
- F. In paragraph (a)(5)(i) by removing "(K)", and adding, in its place, "(L)";
- G. By revising paragraph (a)(5)(ii); and
- H. By removing paragraph (a)(5)(iii).

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

- (a) * * *
- (4) * * *
- (i) * * *
- (K) Documentation of any confirmation process or processes; and

* * * * *

- (5) * * *
- (ii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the

borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

* * * * *

20. Section 682.603 is amended as follows:

- A. By revising paragraph (b);
- B. By adding a new paragraph (c);
- C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively; and
- D. By adding a new paragraph (g).

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

* * * * *

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

- (1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;
- (2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and
- (3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

* * * * *

(g) A school must cease to certify a loan based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

21. Section 682.604 is amended as follows:

- A. By revising paragraph (c)(5);
- B. By revising the introductory text of paragraph (c)(6);
- C. By adding a new paragraph (c)(10); and
- D. By revising paragraphs (f) and (g).

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

* * * * *

- (c) * * *
- (5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a

Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

(6) Unless the provision of § 682.207(d) applies—

* * * * *

(10) Notwithstanding the requirements of paragraphs (c)(6)-(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(B) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

* * * * *

(f) *Initial counseling.* (1) A school must conduct initial counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the borrower has received a prior Stafford, SLS, or Direct loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. As an alternative, in the case of a student enrolled in a correspondence program or a student enrolled in a study-abroad program that the postsecondary home

school approves for credit, the school may provide the counseling through written materials, prior to releasing those loan proceeds.

(2) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(iii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iv) In the case of a borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(5) A school must maintain documentation substantiating the school's compliance with this section for each borrower.

(g) *Exit counseling.* (1) A school must conduct exit counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must conduct this counseling shortly before the borrower ceases at least half-time study at the school. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the postsecondary home school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If a borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after learning that the

borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Stafford or SLS loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing of SLS loans);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer, that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records; and

(vii) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts exit counseling by electronic interactive means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(5) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

22. Section 682.610 is amended by revising paragraph (b) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any confirmation process or processes the school may have used.

* * * * *

**PART 685—WILLIAM D. FORD
FEDERAL DIRECT LOAN PROGRAM**

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

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

24. Section 685.102 is amended in paragraph (b)

A. By revising the definitions of "Default" and "Estimated financial assistance."

B. By adding after "Loan fee" a new definition "Master promissory note (MPN)."

§ 685.102 Definitions.

* * * * *

(b) * * *

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97-376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96-342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan;

(viii) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and

(C) Non-Federal loan amounts;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined; and

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Master promissory note (MPN): A promissory note under which the borrower may receive loans for a single academic year or multiple academic years. Loans for multiple academic years may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

* * * * *

25. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

(a) **Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.**

(1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(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 must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school disburses the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school disburses the funds to the student.

(b) **Application for a Direct PLUS Loan.** To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must 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 must perform the following functions: A school participating under school origination

option 2 must 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.

(c) *Application for a Direct Consolidation Loan.*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers

questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.216.

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

26. Section 685.203 is amended by revising paragraphs (a) and (c)(2); and by revising the introductory text of paragraphs (d) and (e) to read as follows:

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) \$2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total

amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) \$3,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total

amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) \$5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed \$8,500.

month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(6) In the case of a student enrolled for no longer than one consecutive 12-

(i) \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.
 (ii) \$5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.
 (7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a

teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed \$5,500.
 * * * * *
 (c) * * *
 (2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal

Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:
 (i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—
 (A) \$4,000 for a program of study of at least a full academic year in length.
 (B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$4,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year

of a program of undergraduate education—
 (A) \$4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to \$4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate

education but has not completed the remainder of the program of study—
 (A) \$5,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.
 (v) In the case of a graduate or professional student, \$10,000.
 (vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) \$4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.
 (B) \$5,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.
 (vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, \$5,000.
 (d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan*

Program aggregate limits. The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:
 * * * * *
 (e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:
 * * * * *
 27. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) to read as follows:

§ 685.204 Deferment.

* * * * *
(b) * * *
(1) * * *

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when—

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(3) The Secretary receives student status information from the borrower's school indicating that the borrower is enrolled on at least a half-time basis.

(B)(1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(2) or (3) of this section, the borrower has the option to continue paying on the loan.

(2) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

* * * * *

28. Section 685.205 is amended as follows:

A. By revising the introductory text of paragraph (a); by removing the "period" at the end of paragraph (a)(2) and adding, in its place, ";;"; by revising paragraph (a)(4); and by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

B. By revising paragraph (b)(6); by removing "or" at the end of paragraph (b)(7); by removing the "period" at the end of paragraph (b)(8) and adding, in its place, ";; or"; and by adding a new paragraph (b)(9).

§ 685.205 Forbearance.

(a) General. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

* * * * *

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

- (i) Under 685.213;
(ii) Under 685.214;
(iii) Under 685.215; or
(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

29. Section 685.207 is amended as follows:

A. By redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii);

B. By adding a new paragraph (b)(2)(ii);

C. By revising the redesignated paragraph (b)(2)(iii).

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii); and by adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

* * * * *

(c) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

* * * * *

30. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(d) Closed schools. If a borrower meets the requirements in 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(e) False certification and unauthorized disbursement. If a borrower meets the requirements in 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(f) Unpaid refunds. If a borrower meets the requirements in 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(g) Payments received after eligibility for discharge. (1) For the discharge

conditions in paragraphs (a)–(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, those payments received after the date that the eligibility requirements for discharge were met but prior to 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 (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

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

31. Section 685.215 is redesignated it as 685.216, a new 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.*

(i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school

or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in 685.213(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the

Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.*

(1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes

collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

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

32. The newly redesignated 685.216 is amended by revising paragraphs (g), (l)(1), (l)(2), and (l)(3) to read as follows:

§ 685.216 Consolidation.

* * * * *

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in 685.202(a)(3)(ii).

* * * * *

(l) * * *

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under 685.212, each borrower must meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under

the provisions of 685.212(d), (e), or (f) as applicable.

33. Section 685.300 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) * * *

(1) * * *

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

* * * * *

34. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), introductory text, (b)(8), and (c)(2) to read as follows:

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

* * * * *

(b) * * *

(2) Unless paragraph (b)(5) or (6) of this section applies, an institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), (6), or (8) of this section applies—

* * * * *

(8)(i) A school is not required to make more than one disbursement if—

(A)(I) The loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(2) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported

by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

35. Section 685.303 is amended by revising paragraph (b)(4) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

36. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)–(iv) as paragraphs (a)(3)(ii)–(v), respectively; by adding a new paragraph (a)(3)(i); by revising the newly redesignated paragraph (a)(3)(v); and by adding new paragraphs (a)(6) and (a)(7).

B. By redesignating paragraphs (b)(1)(ii), (b)(2), introductory text, (b)(2)(i) through (vi), (b)(2)(vii), (b)(3), and (b)(4), introductory text, (b)(4)(i) through (vi), (b)(4)(viii), (b)(5), and (b)(7), respectively; by revising paragraph (b)(1) and newly redesignated paragraphs (b)(3), (b)(4), introductory text, (b)(4)(v), (b)(4)(vi), (b)(4)(viii), and (b)(7); and by adding new paragraphs (b)(2), (b)(4)(vii), and (b)(6).

§ 685.304 Counseling borrowers.

(a) Initial counseling. (1) Except as provided in paragraph (a)(5) of this section, a school must conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless the borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

* * * * *

(v) Inform the student as to the average anticipated monthly repayment for those students based on the average indebtedness provided under paragraph (a)(3)(iv) of this section.

* * * * *

(6) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

(b) * * *

(1) A school must conduct exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the borrower ceases at least half-time study at the school.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials within 30 days after the borrower completes the program.

(3) If a borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the school must provide exit counseling either through interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) In conducting the exit counseling, the school must—

* * * * *

(v) Meet the requirements described in paragraphs (a)(3)(ii) and (iii) of this section;

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vii) Review with the borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(viii) Require the borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer (if known). The school must provide this information to the Secretary within 60 days.

* * * * *

(6) A school that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

37. Section 685.402 is amended by adding a new paragraph (f) to read as follows:

§ 685.402 Criteria for schools to originate loans.

* * * * *

(f) Determination of eligibility for multi-year use of the Master Promissory Note.

(1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be eligible for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary.

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

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