DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA16

Federal Family Education Loan (FFEL) Program and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, 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. The Secretary is amending these regulations to reduce administrative burden for program participants, provide benefits to borrowers, and protect the taxpayers' interests.

DATES: We must receive your comments on or before September 11, 2000.

ADDRESSES: Address all comments about these proposed regulations to Ms. Pamela A. Moran, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: ffelnprm@ed.gov.

You must include the term ''Team 1 FFEL'' in the subject line of your electronic message.

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

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Mr. George Harris, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

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

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 programs.

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

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA) requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

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

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

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

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
- American Council on Education
- Career College Association
- Coalition of Higher Education Assistance Organizations
- Consumer Bankers Association
- Education Finance Council
- Education Loan Management Resources
- Legal Services
- National Association of College and University Business Officers
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Association of Student Loan Administrators
- National Council of Higher Education Loan Programs
- National Direct Student Loan Coalition

- Sallie Mae, Inc.
- Student Loan Servicing Alliance
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Significant Proposed Regulations

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

FFEL and Direct Loan Program Changes

Sections 682.210 and 685.204—Deferment

Current Regulations: In the FFEL and Direct Loan programs, the current regulations and policy provide that, except in the case of an in-school deferment, a deferment may not be granted for a period beginning more than 6 months before the date the lender (or the Department on a Direct Loan) receives the request and the documentation required for the deferment.

For a borrower who requests an unemployment deferment on the basis of providing documentation of employer contacts, current regulations require the name of the employer contacted, the employer's address and telephone number, and the name or title of the person contacted.

Proposed Regulations: Proposed § 682.210(a)(5) would remove the 6-month limitation from all deferment categories except for the unemployment deferment. No change to the Direct Loan regulations is needed because the explicit 6-month limitation is not included in the Direct Loan regulations and only applies to Direct Loans through a cross-reference to the FFEL deferment regulations.

The proposed regulations would also modify the requirement that loan holders obtain specific documentation of employment contact from borrowers who request an unemployment deferment. These requirements only apply to borrowers who request continuations of their deferments based on their attempts to get employment, and not to borrowers who apply for an initial period of unemployment deferment or to those borrowers who qualify based on their eligibility for unemployment benefits. These changes will allow loan holders to accept alternative documentation that provides sufficient information to support a borrower's claim that he or she is seeking employment as required. No change to the Direct Loan regulations is needed because the explicit unemployment deferment rules are not included in the Direct Loan regulations. Instead, unemployment deferments in the Direct Loan Program are granted using the same provisions that exist in the FFEL unemployment deferment regulations.

Reasons: On October 29, 1999 (64 FR 58622), the Department eliminated the 6-month limitation for retroactive application of a deferment for the in-school deferment only. During this year's negotiated rulemaking, the committee agreed to make the deferment rules more consistent for borrowers and for the parties that administer the FFEL Program by removing the 6-month limitation from all other deferment categories except the unemployment deferment.

The 6-month limitation on retroactively granting deferments was intended, in part, to motivate borrowers to make timely deferment requests and provide the necessary deferment documentation. However, the committee concluded that the limitation does not serve that purpose. Instead, the limitation causes confusion and complexity for borrowers. Moreover, the limitation reduces the usefulness of deferments for borrowers who are delinquent on payments and are trying to avoid default. The 6-month limitation means that the application of a deferment to which the borrower is entitled might still leave the borrower significantly delinquent. We hope the elimination of this limitation will allow loan holders to better assist borrowers to avoid default.

The committee considered removing the 6-month limitation on retroactive application of the unemployment deferment but decided not to do so. Under the current regulations, (including the rule that the deferment may not begin earlier than 6 months before the date the lender receives the borrower's deferment request) a borrower can be granted an initial period of unemployment deferment without documenting a search for full-time employment. This provision, unique to the unemployment deferment for borrowers who do not qualify based on their eligibility for unemployment benefits, is based on the understanding that borrowers may not immediately begin a job search on the date they become unemployed. However, it means that, unlike in other cases, the borrower is able to get a deferment without proving that he or she meets all the conditions for the deferment.

In light of this situation, the committee decided to retain the 6-month retroactive limit for an unemployment deferment that was granted based on an ongoing search for employment. The Secretary believes the integrity of the FFEL and Direct Loan programs would be jeopardized if there was no retroactive limit for granting this kind of unemployment deferment.

Several of the non-federal negotiators also proposed to modify the types of documentation required from a borrower to show that he or she had conducted a diligent search for employment. The committee discussed situations in which job announcements do not specify some or most of the information required under current regulations, such as the name of the employer, or the name and title of the person to be contacted. In response to these concerns, the committee agreed to propose regulations that include less prescriptive language so that borrowers could provide various forms of employment contact documentation acceptable to the loan holder.

Sections 682.210(s)(6) and 685.204(b)(3)—Economic Hardship Deferment

Statute: Section 435(o)(1) of the HEA uses the borrower's ''adjusted gross income'' as the income measurement to determine if a borrower would have an economic hardship in repaying a loan, but also authorizes the Department to establish additional criteria.

Current Regulations: Current regulations only refer to the borrower's total monthly gross income in identifying the income that is used when determining a borrower's eligibility for an economic hardship deferment.

Proposed Regulations: The committee agreed that the regulations should be modified to incorporate the adjusted gross income standard included in the HEA. Accordingly, in these proposed regulations, § 682.210(s)(6) would be revised so that a borrower could qualify for an economic hardship deferment based on either his or her monthly gross income from all sources, or a monthly amount calculated as one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most

recently filed Federal income tax return. No change to the Direct Loan regulations is needed because the Direct Loan regulations implement the statutory requirements through a cross-reference to the FFEL economic hardship deferment regulations.

Reasons: The committee noted that section 435(o)(1)(B) of the HEA used ''adjusted gross income'' when referring to a borrower's income. It was agreed that the regulations should add the statutory standard to the regulations while retaining the existing regulatory standard to provide greater flexibility for any borrower to document his or her income. The committee believed that some borrowers found it difficult to document their total monthly income from all sources, as is required under current § 682.210(s)(6)(x). The committee believed that a borrower should be given the option of using the adjusted gross income amount from the borrower's most recent Federal income tax return as a simplified way to demonstrate that he or she qualifies for an economic hardship deferment.

Sections 682.402 and 685.214—False Certification Discharge

Current Regulations: The FFEL and Direct Loan regulations on false certification discharges have the same rules with respect to a discharge based on an improper determination of the student's ability-to-benefit (ATB). Under those rules, if a valid ATB determination was not made, the borrower can qualify for a false certification loan discharge if the student is unable to obtain employment in the occupation for which the training was intended, or if the student finds a job only after receiving training that was not provided by the school that certified the borrower's loan application. Current regulations in both programs require borrowers who want a false certification discharge to file an application for the discharge.

Proposed Regulations: With regard to a false certification discharge based upon an ATB issue, all requirements related to a student's employment after leaving school are being removed from the FFEL and Direct Loan regulations. In addition, for both programs, the proposed rules would permit an ATB false certification discharge to be granted without an application if it is determined that the borrower qualifies based on information in the possession of the Secretary or guaranty agency.

Reasons: On November 16, 1999, the U.S. Court of Appeals for the District of Columbia, in *Jordan* v. *Riley* (99–5024), ruled invalid the employment attempt provisions in the false certification discharge regulations. The Court of Appeals found that section 437(c) of the HEA does not authorize us to include criteria in the regulations that attempt to measure whether, despite any deficient ATB certification, the student nevertheless had the ability to benefit from the training offered by the school. The Court concluded that a student's post-training employment experience is irrelevant to the truth or falsity of the certification. Rather, the Court ruled that the HEA only authorizes us to determine whether the school properly tested the student and the student passed the test. We have decided to extend the Court's ruling to all borrowers, not just those covered by the Court's ruling. Thus, we will no longer consider the student's employment or employment attempts in resolving false certification discharge claims.

We (or a guaranty agency) occasionally learn of information that strongly suggests that all borrowers in a certain category would likely qualify for a false certification discharge. For example, we might determine that all students at a specific school during a certain time period had incorrect ATB determinations. In the interest of assisting those borrowers, (many of whom may be unaware of the possibility of receiving a loan discharge), the committee decided that it would be appropriate to discharge those loans without an individual discharge request from each borrower. On October 29, 1999 (64 FR 58622), we issued regulations that authorized the granting of closed school loan discharges in certain cases without individual requests from each borrower. These proposed regulations would extend that approach to false certification discharges.

During the negotiations, the committee agreed that a borrower should be able to receive a false certification discharge based on an invalid ATB determination, even if the school was not directly involved in the invalid testing or other determination of the student's ATB because the invalid testing was done by an independent test administrator. Although we believed that this was consistent with the current regulations, to avoid potential confusion, we agreed to remove the words ''the school's'' in the reference to invalid testing of a student's ATB in § 682.402(e)(3)(ii) and § 685.214(c)(1). The committee agreed that the regulatory language that would remain after that deletion was sufficient to apply to all invalid ATB determinations made, regardless of who made them.

FFEL Changes

Section 682.410—Fiscal, Administrative, and Enforcement Requirements

Current Regulations: In collecting on defaulted loans, a guaranty agency currently must follow the regulatory requirements contained in § 682.410(b). Those regulations state, with a great amount of specificity, precisely when certain collection activities must occur in collecting a defaulted loan. They also restrict a guaranty agency's use of litigation in collecting defaulted loans. The collection rules in current § 682.410(b) were developed when guaranty agencies used Federal money to pay for their collection activities and were designed to require certain collection activities while ensuring the proper use of Federal funds.

Proposed Regulations: We would generally no longer require a guaranty agency to perform routine collection activities (collection letters and telephone calls) within the specific time periods, prescribed in the current regulations. The guaranty agency could develop its own collection strategy, as long as, for a non-paying borrower, the guaranty agency performed at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt. The proposed regulations would also eliminate the general prohibition against a guaranty agency suing borrowers who owe defaulted loans. The proposed regulations would permit a guaranty agency to file a civil suit against a borrower to compel repayment if the borrower had no garnishable wages or the guaranty agency determined that the borrower had sufficient attachable assets or non-garnishable income that could be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

The proposed regulations would require a guaranty agency to undertake a small number of required activities and borrower notifications that the committee believed would protect borrowers and comply with other applicable laws. The proposed regulations would require that, within 45 days after paying a lender's default claim, the guaranty agency must send a notice advising the borrower that a default claim has been paid and that the borrower has an opportunity to enter into a repayment agreement with the guaranty agency and to request an administrative review of the status of the debt. In addition, the guaranty agency must notify the borrower that he or she may have certain legal rights in

the collection of debts, and that the borrower may wish to contact a counselor or lawyer regarding those rights. The guaranty agency must also warn the borrower that it may: (1) Report the default to credit bureaus (if it does so, the guaranty agency must notify the borrower of that action and that the borrower's credit rating may thereby have been damaged); (2) assess collection costs against the borrower; (3) administratively garnish the borrower's wages; (4) file a civil suit to compel repayment; (5) offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower; (6) assign the loan to the Secretary in accordance with § 682.409; and (7) take other lawful collection means to collect the debt, at the discretion of the guaranty agency.

Reasons: As a result of changes made to the HEA in 1998, a guaranty agency now pays for collection activities on defaulted loans with money in its ''Operating Fund,'' which is the property of the guaranty agency. Thus, guaranty agencies now have strong financial incentives to collect defaults in a cost effective manner. A guaranty agency that is an effective collector of defaulted loans will be financially better off than one that is an ineffective collector. The committee believed that these financial incentives eliminate the need for the prescriptive collection activities found in the current regulations (other than the borrower protection provisions discussed under ''proposed regulations''). The current sequence of required phone calls and letters, and the general restrictions against litigation, served a purpose when guaranty agencies funded their collection efforts with Federal Reserve Fund money. The new financing structure for guaranty agencies created by the 1998 Amendments to the HEA reduced the need for those prescriptive regulations.

Guaranty agencies have frequently expressed the view that they could do a better job in collecting defaults if they were free to develop their own collection strategies unhindered by the current default due diligence rules. The proposed regulations would give the agencies that flexibility.

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

Current Regulations: Guaranty agencies generally are required to maintain records for 5 years after a loan has been paid in full or determined to be uncollectible.

Proposed Regulations: The length of time a guaranty agency must retain required loan records for loans paid in full by the borrower would be reduced from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which a guaranty agency receives payment in full from any other source (for example, payoff of a loan by a consolidation loan), or for those loans that are not paid in full, the 5-year retention period would continue to be in effect. In particular cases, we could require a guaranty agency to retain records beyond the 3-year or 5-year minimum periods.

Reasons: On October 29, 1999 (64 FR 58622), we issued regulations that generally reduced record retention requirements for lenders in the FFEL Program from 5 years to 3 years from the date the loan is repaid in full by the borrower. Several non-federal negotiators involved in this year's negotiated rulemaking session proposed a similar reduction in guaranty agency record retention requirements for defaulted loans paid in full by borrowers as a result of guaranty agency collection efforts. The committee generally agreed that reducing the record retention period to 3 years in these limited cases would not diminish program integrity and borrower protections, and would greatly reduce the costs of maintaining records for this portion of the guaranty agency's portfolio.

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. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

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.

Summary of Potential Costs and Benefits

These proposed regulations benefit borrowers and institutions by simplifying and providing additional flexibility in administering loan deferments. The proposed regulations also provide additional flexibility by permitting false certification discharges without an application for qualified borrowers on the basis of information possessed by the guaranty agency or the Secretary. Further flexibility is provided to guaranty agencies by proposed changes that simplify collection requirements by making them less prescriptive, and reduce the required retention of records from 5 years to 3 years for loans fully repaid by borrowers.

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, *§ 682.210 Deferment.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect guaranty agencies and lenders that participate in the FFEL Program, as well as individual FFEL and Direct Loan borrowers. The U.S. Small Business Administration Size Standards define institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below

$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

The 36 guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' for this purpose. Individual FFEL and Direct Loan borrowers also are not considered ''small entities'' under the Regulatory and Flexibility Act. A number of the over 4,000 lenders participating in the FFEL Program meet the definition of ''small entities.'' The Secretary has determined that the proposed regulations will not have a significant economic impact on these lenders.

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 682.210, 682.402, 682.414, 685.204, and 685.214 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program. Deferment documentation requirements.

These proposed regulations would affect the potential ability of borrowers to qualify for an economic hardship deferment. A borrower could qualify for an economic hardship deferment based on one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return, instead of the borrower's total monthly gross income as under current regulations. The total burden hour reduction (based on approximately 6 minutes per application) is not expected to be substantial because of the small number of borrowers who would choose this option.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program. False certification discharge of a borrower's loan obligation without an application form.

These proposed regulations would affect the potential loan discharge for borrowers if the Secretary or the guaranty agency, with the Secretary's permission, determines that a borrower qualifies for a discharge based on information in the Secretary's or guaranty agency's possession. In these cases, the borrower would not need to submit a false certification loan discharge application to receive a discharge. Included in this category would be FFEL borrowers who have received false certification discharges of their Federal Direct Loans based on the same qualifying conditions, and Direct Loan borrowers who have received the same discharges of their FFEL loans. The total burden hour reduction (based on approximately 30 minutes per application) is not expected to be substantial because of the small number of borrowers who would not be required to submit a false certification loan discharge application.

Collection of Information: Reduction in the length of time a guaranty agency must retain loan records.

These proposed regulations would affect all FFEL guaranty agencies by reducing the length of time a guaranty agency must retain required loan records for loans paid in full by the borrower from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which the guaranty agency receives payment in full from any other source (for example, payoff of a loan by a consolidation loan), or for those loans that are not paid in full, the 5-year retention period will continue to be in effect, except that in particular cases, the Secretary may require the retention of records beyond the 3-year or 5-year minimum periods. The total burden hour reduction is not expected to be substantial because most of the burden in record retention is associated with the initial assembling and transfer of records to a retention system.

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

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

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The FFEL Program and the William D. Ford Federal Direct Loan Program are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education 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 19, 2000.

Richard W. Riley,

Secretary of Education.

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

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

2. Section 682.210 is amended by:

A. Revising paragraph (a)(5).

B. Revising paragraph (h)(2)(i).

C. Removing the words ''of up to one year at a time'' from paragraph (s)(6) introductory text.

D. Revising paragraphs (s)(6)(iii), (iv), (v), (ix), and (x).

The revisions read as follows:

§ 682.210 Deferment.

(a) * * *

(5) An authorized deferment period begins on the date that the holder determines is the date that the condition entitling the borrower to the deferment first existed, except that an initial unemployment deferment as described in paragraph (h)(2) of this section cannot begin more than 6 months before the date the holder receives a request and documentation required for the deferment.

* * * * *

(h) * * *

(2) * * *

(i) Describing the borrower's diligent search for full-time employment during the preceding 6 months, except that a borrower requesting an initial period of unemployment deferment, which may not exceed 6 months prospectively, is not required to describe his or her search for full-time employment. To continue an unemployment deferment, the borrower's written certification must include information showing that the borrower made at least six diligent attempts to secure employment to support the period covered by the certification. This information could be the name of the employer contacted and the employer's address and telephone number, or other information acceptable to the holder showing that the borrower made six diligent attempts to obtain full-time employment;

* * * * *

(s) * * *

(6) * * *

* * * * *

(iii) Is working full-time and has a monthly income that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that—

(A) Does not exceed twice the amount described in paragraph (s)(6)(iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s)(6)(iii) of this section.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing—

(A) The amount of the borrower's most recent monthly income or a copy of the borrower's most recently filed Federal income tax return; and

(B) For periods of deferment under paragraphs (s)(6)(iv) and (v) of this section, evidence that would enable the lender to determine the amount of the monthly payments to all other entities for Federal postsecondary education loans that would have been owed by the borrower during the deferment period.

(x) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

* * * * *

3. Section 682.402 is amended by:

A. In paragraph (e)(3)(ii), removing the words ''the school's''.

B. In paragraph (e)(3)(ii)(A) adding the word ''and'' after the semicolon, and in paragraph (e)(3)(ii)(B), removing the word ''and'' after the semi-colon.

C. Removing paragraph (e)(3)(ii)(C).

D. Revising paragraph (e)(13)(ii)(A).

E. Revising paragraph (e)(13)(ii)(B) introductory text.

F. In paragraph (e)(13)(ii)(B)(*2*), removing the word ''or'' that appears after the semi-colon.

G. In paragraph (e)(13)(ii)(C), removing the period and adding in its place, ''; or''.

H. Adding a new paragraph (e)(13)(ii)(D).

I. Adding a new paragraph (e)(14).

The additions and revisions read as follows:

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

* * * * *

(e) * * *

(13) * * *

(ii) * * *

(A) For periods of enrollment beginning prior to July 1, 1987, was determined by the school to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6, as in existence at the time the determination was made;

(B) For periods of enrollment beginning between July 1, 1987 and June 30, 1996, achieved a passing grade on a test—

* * * * *

(D) For periods of enrollment beginning on or after July 1, 1996—

(*1*) Has a high school diploma or its recognized equivalent;

(*2*) Has obtained within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of 34 CFR part 668; or

(*3*) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of 34 CFR part 668.

* * * * *

(14) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

* * * * *

4. Section 682.406 is amended by revising paragraph (a)(11) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) * * *

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6).

* * * * *

5. Section 682.410 is amended by:

A. Amending paragraph (b)(5)(i) introductory text by removing the reference to paragraph ''(b)(6)(iii)'' and adding in its place ''(b)(6)(v)''.

B. Amending paragraph (b)(5)(ii) introductory text by removing the reference to paragraph ''(b)(6)(ii)'' and adding in its place ''(b)(6)(v)''.

C. Revising paragraph (b)(6).

D. Removing paragraph (b)(7).

E. Redesignating paragraphs (b)(8) through (b)(11) as paragraphs (b)(7) through (b)(10), respectively.

F. Amending redesignated paragraph (b)(7)(ii) by removing the reference to paragraph ''(b)(8)(i)'' and adding in its place ''(b)(7)(i)''.

G. Amending redesignated paragraph (b)(7)(ii)(D) by removing the reference to paragraph ''(b)(6)(i)'' and adding in its place ''(b)(6)''.

H. Amending redesignated paragraph (b)(8) by removing the reference to paragraphs ''(b)(2), (5), (6), and (7)'' and adding in its place ''(b)(2), (5), and (6)''.

I. Amending redesignated paragraph (b)(9)(i)(E) by removing the references to paragraphs ''(b)(10)(i)(D)'' and ''(b)(10)(i)(J)'' and adding in their place ''(b)(9)(i)(D)'' and ''(b)(9)(i)(J)'', respectively.

J. Amending redesignated paragraph (b)(9)(i)(F) by removing the reference to paragraph ''(b)(10)(i)(H)'' and adding in its place ''(b)(9)(i)(H)''.

K. Amending redesignated paragraph (b)(9)(i)(I) by removing the reference to paragraph ''(b)(10)(i)(H)'' and adding in its place ''(b)(9)(i)(H)''.

L. Amending redesignated paragraph (b)(9)(i)(K) by removing both references to paragraph ''(b)(10)(i)(B)'' and adding in their place ''(b)(9)(i)(B)''.

M. Amending redesignated paragraph (b)(9)(i)(L) by removing both references to paragraph ''(b)(10)(i)(B)'' and adding in their place ''(b)(9)(i)(B)''.

N. Amending redesignated paragraph (b)(10)(ii) by removing the reference to ''§ 682.410(b)(11)(i)'' and adding in its place ''§ 682.410(b)(10)(i)''.

The revisions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(6) *Collection efforts on defaulted loans.*

(i) A guaranty agency must engage in reasonable and documented collection activities on a loan on which it pays a default claim filed by a lender. For a non-paying borrower, the agency must perform at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt.

(ii) A guaranty agency must attempt an annual Federal offset against all eligible borrowers. If an agency initiates proceedings to offset a borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, it may not initiate those proceedings sooner than 60 days after sending the notice described in paragraph (b)(5)(ii)(A) of this section.

(iii) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)(iv) of this section, by following the procedures described in paragraph (b)(9) of this section.

(iv) A guaranty agency may file a civil suit against a borrower to compel repayment only if the borrower has no wages that can be garnished under paragraph (b)(9) of this section, or the agency determines that the borrower has sufficient attachable assets or income that is not subject to administrative wage garnishment that can be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

(v) Within 45 days after paying a lender's default claim, the agency must send a notice to the borrower that contains the information described in paragraph (b)(5)(ii) of this section. During this time period, the agency also must notify the borrower, either in the notice containing the information described in paragraph (b)(5)(ii) of this section, or in a separate notice, that if he or she does not make repayment arrangements acceptable to the agency, the agency will promptly initiate procedures to collect the debt. The agency's notification to the borrower must state that the agency may administratively garnish the borrower's wages, file a civil suit to compel repayment, offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, assign the loan to the Secretary in accordance with § 682.409, and take other lawful collection means to collect the debt, at the discretion of the agency. The agency's notification must include a statement that borrowers may have certain legal rights in the collection of debts, and that borrowers may wish to contact counselors or lawyers regarding those rights.

(vi) Within a reasonable time after all of the information described in paragraph (b)(6)(v) of this section has been sent, the agency must send at least one notice informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged.

* * * * *

6. Section 682.414 is amended by revising paragraph (a)(2) to read as follows:

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

(a) * * *

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond this minimum period.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

8. Section 685.214 is amended by:

A. Removing the words ''the school's'' in paragraph (c)(1).

B. Adding the word ''and'' after the semicolon at the end of paragraph (c)(1)(i).

C. Removing ''; and'' at the end of paragraph (c)(1)(ii) and adding, in its place, a period.

D. Removing paragraph (c)(1)(iii).

E. Adding a new paragraph (c)(6).

The revisions read as follows:

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

* * * * *

(c) * * *

(6) *Discharge without an application.* The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

* * * * *

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