

**DEPARTMENT OF EDUCATION****34 CFR Parts 674, 682, and 685**

RIN 1840-AC94

[Docket ID ED-2008-OPE-0009]

**Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement provisions of the College Cost Reduction and Access Act of 2008 (CCRAA) (Pub. L. 110-84), including the statutory provisions that establish the Income-Based Repayment (IBR) plan and the Public Service Loan Forgiveness Program.

**DATES:** *Effective Date:* These regulations are effective July 1, 2009.

*Implementation date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and loan servicers that administer the Perkins Loan, FFEL and Direct Loan programs, may, at their discretion, choose to implement the new and amended provisions of §§ 674.34, 682.210, 682.211, and 685.204 governing the military service and post-active duty student deferments, including related forbearance provisions contained in these final regulations on or after November 1, 2008. For further information, see the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For information related to the IBR plan, Pamela Moran or John Kolotos. Telephone: (202) 502-7732 or (202) 502-7762 or via the Internet at: [Pamela.Moran@ed.gov](mailto:Pamela.Moran@ed.gov) or [John.Kolotos@ed.gov](mailto:John.Kolotos@ed.gov). For information related to the Public Service Loan Forgiveness Program, Nikki Harris. Telephone: (202) 219-7050 or via the Internet at: [Nikki.Harris@ed.gov](mailto:Nikki.Harris@ed.gov). For information related to the economic hardship deferment, the military service deferment, or the post-active duty student deferment, Vanessa Freeman. Telephone: (202) 502-7523 or via the Internet at: [Vanessa.Freeman@ed.gov](mailto:Vanessa.Freeman@ed.gov).

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If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

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**SUPPLEMENTARY INFORMATION:** On July 1, 2008, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins Loan, FFEL, and Direct Loan Programs in the **Federal Register** (73 FR 37694).

In the preamble to the NPRM, the Secretary discussed on pages 37695 through 37697 the major regulations proposed in that document to implement provisions of the CCRAA, including the following:

- Amending §§ 674.34 and 682.210, which govern economic hardship deferments in the Perkins Loan and FFEL programs to define the term “family size”, clarify that the poverty guidelines used in determining economic hardship are issued by the U.S. Department of Health and Human Services (HHS), provide that the poverty guideline used for a borrower who is not a resident of a State identified in the poverty guidelines is the poverty guideline for the relevant family size for the 48 contiguous States, and eliminate the economic hardship deferment categories based on the 20/220 provisions.

- Amending §§ 674.34(i)(3), 682.210(u)(3), and 685.204(f)(1)(ii) to clarify that a borrower’s eligibility for a post-active duty student deferment terminates if the borrower returns to enrolled student status on at least a half-time basis, and that a borrower returning from active duty who is in a grace period is not required to waive the grace period to use the 13-month post-active duty student deferment.

- Amending §§ 674.34(i)(2)(i) and (ii), 682.210(u)(2)(i) and (ii), and 685.204(f)(2)(i) and (ii) to clarify that, for purposes of the post-active duty student deferment, active State duty for members of the National Guard includes both active State duty under which a Governor activates members of the National Guard under State statute or policy and the activities are paid for with State funds, and active State duty under which a governor, with the approval of the President or the U.S. Secretary of Defense, activates members

of the National Guard and the activities are paid for with Federal funds.

- Amending §§ 674.34(i)(2)(iv), 682.210(u)(2)(iv), and 685.204(f)(2)(iv) to specify that active duty for purposes of the active duty deferment does not include a borrower who is serving full-time in a permanent position with the National Guard, unless the borrower is reassigned as part of a call-up to active duty service.

- Amending §§ 674.34(h)(7), 682.210(t)(9), and 685.204(e)(7) to authorize loan holders to grant a military service deferment to an otherwise eligible borrower for an initial deferment period not to exceed 12 months based on a request from either the borrower or the borrower’s representative.

- Amending §§ 674.34(i)(4), 682.210(u)(4), and 685.214(f)(4) to specify that if a borrower is eligible for both the 180-day military service deferment following the borrower’s demobilization, and the 13-month post-active duty student deferment, the borrower’s eligibility for these separate deferments runs concurrently.

- Amending § 682.211(h) to require a FFEL loan holder to grant a mandatory forbearance to a borrower who is called to active State duty for more than 30 days and who does not qualify for a military service deferment during the active State duty service period, but who qualifies for the post-active duty student deferment.

- Adding new §§ 682.215(a) and 685.221(a) to incorporate the statutory definition of the term partial financial hardship, and define related terms including Adjusted Gross Income (AGI), family size, poverty guideline, and eligible loan.

- Adding new §§ 682.215(b) and 685.221(b) to incorporate the statutory formula for calculating a monthly payment under the IBR plan, adjusting that payment when the borrower’s loans are held by more than one loan holder, and establishing minimum payment amounts.

- Adding new §§ 682.215(b), 682.215(c), 685.221(b), and 685.221(c), and amending § 682.300(b) to incorporate the statutory provisions requiring IBR payments to be applied first toward interest due on the loan, next toward any fees, and then to the loan principal, and to provide that if the borrower’s payment is insufficient to pay accrued interest, the Department pays (or on a Direct Loan, does not charge) the accrued interest on an eligible subsidized loan for a period of three consecutive years from the date the borrower initially began repayment on each loan under the IBR plan.

- Adding new §§ 682.215(d) and 685.221(d) to establish the terms and repayment amounts for a borrower who no longer has a partial financial hardship but wants to continue making income-based payments under IBR, or for a borrower who wants to leave the IBR plan entirely.

- Adding new §§ 682.215(e) and 685.221(e) to establish the procedures a loan holder must follow to determine annually whether a borrower has a partial financial hardship by verifying the borrower's AGI and family size. If the borrower does not provide family size information, the loan holder uses a family size of one.

- Adding new §§ 682.215(f) and 685.221(f) to establish the conditions that a borrower must satisfy to qualify for loan forgiveness under IBR, establish how a loan holder determines whether a borrower made qualifying payments, and provide that the Department will repay or cancel the loan after 25 years if the borrower makes qualifying payments and meets certain requirements.

- Amending § 682.302(a) to provide for a separate calculation of the special allowance rate for the unpaid accrued interest on a loan in repayment under the IBR plan.

- Amending § 685.209(c) to identify the periods specified in section 455(e) of the HEA that count toward the 25-year repayment requirement under the Income Contingent Repayment (ICR) plan, and to provide that repayment periods will continue to count for certain borrowers currently in ICR.

- Amending § 682.302(f) to incorporate statutory changes to the definition of not-for-profit holder and to describe the circumstances in which a State or non-profit entity is deemed to be owned or controlled by a for-profit entity.

- Adding a new § 685.219(c) to incorporate the statutory requirements that a borrower must satisfy to qualify for public service loan forgiveness and provide that a borrower in an AmeriCorps position may make qualifying payments by using his or her AmeriCorps education award.

- Adding a new § 685.219(b) to define several terms including employee, full-time, public interest law, and public service organization, needed to implement the public service loan forgiveness program.

- Adding a new § 685.219(d) and (e) to provide that the Department will cancel any balance remaining on a loan for a borrower who works in a qualifying public service job and who makes 120 qualifying payments while employed in such a job and requests

loan forgiveness on a form provided by the Department.

- Amending §§ 682.201 and 685.220 to provide that a FFEL borrower may obtain a Direct Consolidation loan for the purpose of using the public service loan forgiveness program.

There are no significant differences between the NPRM and these final regulations resulting from public comments.

In addition to the changes necessary to implement provisions of the CCRAA, these final regulations also incorporate certain changes made to the HEA by the Higher Education Opportunity Act (HEOA) (Pub. L. 110-315) enacted on August 14, 2008. These changes are:

- Amending §§ 682.215(a)(2) and 685.221(a)(2) to exclude defaulted loans from the category of eligible loans for IBR repayment and deleting the proposed amendments to §§ 682.215(g)(7), 682.410(b)(5)(vi)(G), and (b)(9)(i)(D) that regulated a guaranty agency's consideration of a defaulted loan for IBR and the reimbursement to a guaranty agency on a defaulted loan that was forgiven under IBR.

- Amending the definition of *Public Service Organization* in § 682.219 for the purpose of the Public Service Loan Forgiveness program to replace in paragraph (5)(i) the term "public child care" with the phrase "early childhood education (including licensed or regulated child care, Head Start, and State-funded pre-kindergarten)"; and to add in paragraph (5)(i) a parenthetical statement after "public health" that reads "(including nurses, nurse practitioners, nurses in a clinical setting and full-time professionals engaged in health care practitioner occupations and health care support occupations as such terms are defined by the Bureau of Labor Statistics)."

- Amending the definition of *Government employee* in § 682.219 for the purpose of the Public Service Loan Forgiveness program to exclude members of the U.S. Congress.

Because these amendments merely implement statutory changes made to the HEA by the HEOA, we do not discuss them in the Analysis of Comments and Changes section.

#### **Waiver of Proposed Rulemaking and Negotiated Rulemaking Regulations Implementing the HEOA**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish an NPRM and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs

authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the APA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary has determined that it is unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the limited regulatory changes. These changes simply amend the Department's regulations to reflect statutory changes made by the HEOA that are already effective. The Secretary does not have discretion as to whether or how to implement these changes.

#### **Implementation Date of These Regulations**

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted her under section 482(c) of the HEA to designate the new and amended provisions in §§ 674.34, 682.210, 682.211, and 685.204 governing the military service deferment and post-active duty student deferment, including related forbearance provisions for early implementation at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate.

#### **Analysis of Comments and Changes**

Except as noted above in regard to the limited regulations implementing provisions of the HEOA, the regulations in this document were developed

through the use of 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 must 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 proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 1, 2008, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 15. More than 1700 parties submitted comments, many of which were substantially similar. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes.

#### **Economic Hardship Deferment (§§ 674.34 and 682.210)**

*Comment:* Many commenters objected to the proposed elimination of what has been referred to as the "20/220" debt-to-income eligibility criterion for an economic hardship deferment in the title IV student loan programs. Medical and dental school students and residents, medical and dental school administrators, and major medical and dental associations voiced particular concern about the impact of the elimination of the 20/220 debt-to-income test on medical and dental interns and residents with high debt burdens and limited income during several years of required additional training that coincide with the borrower's first few years of loan repayment. The commenters believed that the impact of eliminating this criterion would be particularly acute for those borrowers pursuing their additional training in urban areas with high living costs. The commenters urged the Secretary to use the discretion

provided to her under section 435(o)(1)(B) of the HEA to establish additional criteria for economic hardship deferments to either reinstate the 20/220 test permanently or to provide an equivalent loan deferment funding mechanism to help these types of borrowers. The commenters contended that doing so would enable these borrowers to continue to have the option to postpone loan payments. The commenters noted that the only other option for these borrowers would be to request a period of forbearance during which interest would be capitalized during this crucial period of training.

Several commenters argued that the loss of this repayment option will deter new physicians from pursuing primary care and research specialties, pursuing a career with the public health service, or practicing medicine in underserved areas, in lieu of more lucrative specialties.

A commenter who represents participating Federal Perkins Loan schools and loan servicers argued that the rationale for eliminating the 20/220 economic hardship category in the FFEL and Direct Loan Programs (i.e., the availability of the new IBR plan and program costs) does not apply to the Federal Perkins Loan program. The commenter believed that there are no Federal costs associated with deferments granted in the Federal Perkins Loan program and noted that IBR is not available to Perkins Loan borrowers except through loan consolidation in the FFEL or Direct Loan Programs, which also results in the loss to the borrower of several Federal Perkins loan benefits. Consequently, the commenter asked the Department to retain the 20/220 debt-to-income criterion for an economic hardship deferment in the Federal Perkins Loan Program regulations.

A few commenters recommended that the definition of "family size" for the purpose of the economic hardship deferment be revised to specify the period of time a borrower must provide support to "other individuals" in order to include those individuals in the borrower's family size. To ensure consistent application of the definition of "family size" in the regulations for IBR, as the Secretary indicates she intended, the commenters recommended that the prescribed period be specified to be "the year the borrower certifies family size." Additionally, the same commenters recommended that the definition of "family size" be further modified for both IBR and economic hardship deferment purposes to include the borrower's unborn children who will be

born during the year in which the borrower will be certifying family size and for whom the borrower will be providing more than half their support to ensure consistency with the definition of "household size" used in the Free Application for Federal Student Aid (FAFSA).

An organization that includes FFEL Program lenders and loan servicers noted that the July 1, 2009, effective date for the elimination of the 20/220 debt-to-income economic hardship criterion did not appear to permit a lender to grant a deferment on or after July 1, 2009, to an eligible borrower for a retroactive deferment period that began prior to July 1, 2009, as would normally be the case for deferments granted under the FFEL Program. The commenter requested that the Department clarify the implementation of the effective date to allow a lender to grant such a deferment to an eligible borrower after July 1, 2009, for up to a 12-month period for a deferment period that starts prior to that date.

*Discussion:* The Department did not eliminate the 20/220 rule in the final regulations published on November 1, 2007, (72 FR 61959) so that borrowers could temporarily continue to qualify for an economic hardship deferment on that basis and to ease the transition for affected borrowers until the newly created IBR plan becomes available on July 1, 2009. Congress eliminated the 20/220 rule from the HEA and effectively replaced it with the new IBR plan, which will provide assistance to more borrowers with high levels of debt over a much longer period of limited earnings than the economic hardship deferment.

The IBR plan does not provide for postponing all borrower payments for a period of time like a deferment. It provides for reduced payments when a borrower can demonstrate partial financial hardship. Depending upon the borrower's circumstances, IBR payments may be less than accrued interest and some borrowers may not be required to make a payment. A borrower has a partial financial hardship if the annual amount due on all of his or her eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, is more than 15 percent of the difference between the borrower's AGI and 150 percent of the poverty line income for the borrower's family size. If the borrower's monthly payment amount is not sufficient to cover the accruing interest on the borrower's subsidized Stafford Loans (or on the portion of the borrower's Consolidation Loan that represents subsidized Stafford Loans), the

Secretary pays the unpaid accrued interest for a period of up to three consecutive years from the point the borrower entered the IBR plan on the loan. Any unpaid accruing interest on the same borrower's unsubsidized Stafford Loans would be capitalized less frequently under IBR than it otherwise would be under either an economic hardship deferment or during a forbearance period. The Department believes that this plan will be advantageous to many borrowers, including borrowers who would have been eligible for the economic hardship deferment under the 20/220 criterion.

The Department disagrees with the commenter's recommendation that the 20/220 economic hardship eligibility criterion be retained in the Federal Perkins Loan Program. The commenter is correct that IBR is not available to Federal Perkins Loan borrowers unless they consolidate their Perkins loans into a FFEL or Direct Consolidation Loan and that a Perkins Loan borrower loses the various employment-related Perkins Loan cancellation opportunities and other benefits by consolidating. Perkins Loan holders, however, may provide low-income borrowers with relief from high payments under § 674.33(c)(2) by extending the borrower's repayment period for up to an additional 10 years for low-income individuals, which will, in most cases, result in reduced monthly payment amounts.

The Department disagrees with the contention that there would be no Federal costs in keeping the 20/220 provision for the Federal Perkins Loan Program. The Perkins loan fund is a Federal asset and, during deferment periods, the fund loses both borrower principal payments and interest that would otherwise accrue and be paid by the borrower.

The Department also does not believe it is appropriate to continue the 20/220 economic hardship criterion only for borrowers in the Perkins Loan Program, the title IV loan program with the lowest average indebtedness and the most generous repayment terms. Finally, the Department believes that since Perkins Loan borrowers generally also have FFEL or Direct Loans, the regulations that govern the economic hardship deferment should be consistent across all the title IV student loan programs.

With regard to the comments on the definition of "family size," we disagree that for purposes of determining family size the period a borrower must provide support to other individuals is the same period as that specified for purposes of IBR. Borrowers requesting a deferment are certifying to their eligibility for the period for which they are requesting the

deferment, and a borrower's family size is relevant for that period. Under the IBR plan, borrowers certify to their family size so that the loan holder can determine a borrower's eligibility for the year the borrower elects the plan, and for each subsequent year that the borrower remains on the plan. The period for which a borrower may request a deferment will often differ from the initial and each subsequent year a borrower is repaying under the IBR plan. However, we agree that the time period for which the borrower certifies family size for purposes of the IBR plan should be clearer in the regulations. We also agree that an unborn child may be included if that child will be born during the year the borrower certifies family size or for the period the borrower requests an economic hardship deferment.

The Department agrees that a loan holder may grant an economic hardship deferment under the 20/220 criterion to an eligible borrower who requests a deferment after July 1, 2009, for a deferment period that began prior to July 1, 2009, and is for a period not to exceed 12 months from that pre-July 1, 2009, start date. No additional economic hardship deferment periods may be granted based on that criterion to the borrower at the conclusion of that deferment period, or for any deferment request on or after July 1, 2009, for a deferment period that begins on or after that date.

*Changes:* We have added the phrase "at the time the borrower certifies family size" to the definition of "family size" in §§ 682.215(a)(3) and 685.221(a)(3) for purposes of the IBR plan. We have also amended the definition of family size for purposes of the economic hardship deferment and the IBR plan in §§ 674.34(e)(8)(ii), 682.210(s)(6)(ix), 682.215(a)(3), and 685.221(a)(3) to clarify that an unborn child is included if that child will be born in the year the borrower certifies family size.

#### **Military Service Deferment and Post-Active Duty Student Deferment (§§ 674.34, 682.210, 682.211, and 682.204)**

*Comment:* One commenter asked that we clarify that all borrowers who return to school on at least a half-time basis after being demobilized from active duty military service, lose the ability to defer payments via the post-active duty student deferment. The commenter believed that the reference in the proposed regulations to "the conclusion of the borrower's active duty military service and any applicable grace period" could create a loophole for

borrowers who re-enroll after their date of demobilization but prior to the end of their grace period. The commenter believes that this language would unintentionally allow ineligible borrowers to receive deferments.

Another commenter asked the Department to clarify that the mandatory forbearance described in § 682.211(h)(2)(iii) does not cover National Guard members who are called to Federal active duty if the active duty does not fall under a war, a military operation as defined in 10 U.S.C. 101(a)(13), or a national emergency declared by the President due to a terrorist attack. Another commenter also recommended that the same mandatory forbearance provision be amended to clarify that the forbearance would begin after the borrower ceases at least half-time enrollment.

*Discussion:* The reference in the proposed regulations governing the post-active duty student deferment to the expiration of the borrower's applicable grace period was not intended to provide a borrower who returns to school after being demobilized, but before using the full grace period on a loan, with an opportunity to retain unlimited eligibility for the post-active duty student deferment after completing school or dropping to less than half-time enrollment, which could be many years later. Under these final regulations, all borrowers who return to at least half-time enrollment following demobilization will lose eligibility for the deferment. Eligible borrowers who do not return to school after being demobilized, however, will receive their full grace period on a loan before the 13-month post-active duty student deferment period would begin.

With regard to the comment on clarifying the applicability of mandatory forbearance, we note that the provision in § 682.211(h)(2)(iii) mentioned by the commenter only applies to members of the National Guard who qualify for a post-active duty student deferment. A member of the National Guard cannot qualify for a post-active duty student deferment for Federal duty. A member of the National Guard may only qualify for the post-active duty student deferment for active State duty. The active State duty may be paid for with State funds, as provided in § 682.210(u)(2)(i), or with Federal funds, as provided in § 682.210(u)(2)(ii). But, in both cases, the member of the National Guard is on active State duty, not on Federal duty.

A member of the National Guard on Federal duty is on "full-time National Guard duty", as that term is defined in

10 U.S.C. 101(d)(5). The post-active duty student deferment only applies to borrowers on active duty as defined in 10 U.S.C. 101(d)(1). The definition of "active duty" in section 101(d)(1) explicitly excludes "full-time National Guard duty". Therefore, a borrower on "full-time National Guard duty" may not qualify for a post-active duty student deferment, or for the mandatory forbearance specified in § 682.211(h)(2)(iii).

A borrower on "full-time National Guard duty" may qualify for a military service deferment, if the borrower meets the other eligibility criteria for the military service deferment. A forbearance covering the period of active duty military service is not necessary for a borrower who qualifies for a military service deferment.

We agree with the commenter that the mandatory forbearance period would begin only after the borrower ceases at least half-time enrollment.

*Changes:* Section 682.211(h)(2)(iii)(B) has been amended to specify that the mandatory forbearance period for a FFEL loan in repayment begins on the day after the borrower ceases enrollment on at least a half-time basis.

### Income-Based Repayment (IBR) Plan

#### General Comments

*Comment:* A couple of commenters recommended that a borrower's total student loan debt, including private education loans and the Federal student loan debt held by all the borrower's loan holders, be considered when calculating the borrower's maximum payment amount under the IBR plan. Another commenter asked that the Department provide reduced interest rates, or forgiveness of a portion of the loan principal, during periods of financial hardship when a borrower is making payments. This commenter also recommended that lenders use a standardized format to explain the determination of the payment amount under IBR to the borrower, so that both the calculation and the source of information can be verified.

One commenter recommended that we include illustrations that demonstrate a borrower's successful compliance or technical noncompliance with the IBR requirements in the final regulations.

A few commenters noted that a lender may use alternative documentation to verify the borrower's income when the borrower's AGI is not available, or the loan holder suspects that the AGI does not accurately reflect the borrower's current income. These commenters recommended that the borrower, as well

as the lender, have the option to provide alternative documentation in place of the AGI. Another commenter recommended that we not use AGI at all, but rely on current year income instead.

Another commenter noted that the IRS disclosure form that will be used to determine a borrower's AGI permits the IRS to provide AGI and "other" tax information to the lender. This commenter recommended that "other" be removed from the regulations, so that extraneous tax information is not provided to lenders.

*Discussion:* The HEA provisions governing IBR do not authorize the use of non-Federal education debt in determining whether a borrower has a partial financial hardship or in calculating IBR payment amounts. Nor does the law provide for reduced interest rates for borrowers in IBR, or for loan forgiveness before the borrower has made 25 years of payments. The Secretary does not have the authority to make these changes to the IBR plan. However, as specified in § 682.215(b)(1)(i), loan holders must take into account a borrower's eligible Federal student loans held by all of the borrower's loan holders when determining monthly payment amounts.

The Department thanks the commenter for the recommendation that lenders use a standardized format to provide IBR payment amount information to a borrower. This is an operational issue and the Department will consider the commenter's recommendation when developing operational guidance to implement the IBR plan.

The Department does not generally include illustrations in its regulations, but will consider providing examples and illustrations, as necessary, in other operational guidance, training materials, and consumer information developed to implement IBR.

The IBR provisions of the HEA require the use of the borrower's AGI to determine whether a borrower has a partial financial hardship. The Department believes that using AGI from the borrower's most recent tax return is the most accurate method to document and verify the borrower's annual income for the purpose of calculating IBR payment amounts. However, we recognize that, in some cases a tax return AGI will not be available, or will not accurately reflect the borrower's current financial circumstances. Therefore, the regulations allow a loan holder to use alternative documentation of the borrower's income under those circumstances. It is up to the loan

holder to decide if it is appropriate to use alternative documentation. However, a borrower may alert the loan holder to any changed financial circumstances that may support the use of alternate documentation.

The consent form the borrower signs is an IRS form, not a Department of Education form. The IRS consent form is used for many purposes unrelated to the IBR plan. The "other" tax information referenced in the regulations includes any other tax information covered by the standard IRS form. Tax information covered by the consent form but not needed for IBR determinations would not need to be tracked or captured in any way by the loan holder.

*Changes:* None.

#### Electing IBR

*Comment:* Several commenters opined that, under the proposed regulations, low-income borrowers who have partially paid the principal on their loans and have less than 10 years remaining to repay their loans would not qualify for lower payments under the IBR plan even if the borrowers' loan payments were high. The commenters argued that these borrowers would not be considered to have partial financial hardships based on a 10-year repayment of their current loan balance. The commenters recommended that the regulations be changed to use the borrowers' current payments to determine if the borrowers would be eligible for lower IBR payments. They contend that this would avoid penalizing borrowers who made payments on their loans, but who might benefit from the IBR plan.

*Discussion:* The commenters misinterpreted the proposed regulations, which reflect the statutory requirement by providing that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. In determining whether a borrower has a partial financial hardship, the loan holder compares two amounts: (1) The annual amount a borrower would pay, at the time the borrower initially entered repayment, on the total outstanding balance of his or her loans, based on a standard repayment over a 10-year repayment period; and (2) the annual amount the borrower would pay under the income-based provisions. The commenters' belief that the borrower's current loan balance would be used as the first part of this comparison is not accurate. Rather, the first part of the comparison uses the annual amount determined as of the date the borrower entered

repayment, without regard to the borrower's current payments.

*Changes:* None.

*Comment:* A group of commenters noted that because the HEOA amended the HEA with respect to the eligibility of defaulted borrowers for the IBR plan, the Department should revise the regulations to reflect that change and clarify that borrowers who are in default are not eligible for the IBR plan for their defaulted loans.

*Discussion:* The Department agrees that under the HEA, as amended by the HEOA, a defaulted borrower is not entitled to elect IBR as a repayment plan. Upon default, a loan is due and payable in full by the borrower and the borrower no longer has the option to choose among the pre-default repayment plans. Under section 422(j) of the HEA, as amended by the HEOA, the Secretary has discretion to require a borrower of a defaulted FFEL loan to repay the loan under the IBR plan after it is assigned to the Department by a guaranty agency, and to require borrowers of other defaulted FFEL and Direct Loans held by the Department to also pay under the IBR plan.

*Changes:* Section 682.215(a)(2) has been amended to exclude defaulted loans from the category of eligible loans for IBR repayment. Proposed §§ 682.215(g)(7) and 682.410(b)(5)(vi)(G) and (b)(9)(i)(D), which would have regulated a guaranty agency's consideration of a defaulted loan for IBR and reimbursement to a guaranty agency on a defaulted loan that was forgiven under IBR have been removed.

#### *IBR Payment Amounts*

*Comment:* Many commenters argued that the proposed regulations for the IBR plan would disadvantage married borrowers in cases where the borrower and his or her spouse both have outstanding loans, file a joint Federal tax return, and both qualify for IBR. In these cases, married borrowers could pay up to double the monthly loan payment of two unmarried borrowers in a similar financial situation. Each of the two married borrowers could be required to make payments representing up to 30 percent of discretionary income (the amount of a borrower's income that exceeds 150 percent of the poverty guideline applicable to the borrower's family size) whereas the HEA limits payments under the IBR plan to 15 percent of discretionary income. The commenters contended that this approach amounts to a "double-counting penalty" because the proposed regulations assumed that each spouse has access to the couple's total discretionary income, without

considering that the other spouse is also making loan payments from the same discretionary income. To avoid this penalty for married borrowers, the commenters suggested that we consider both spouses' loan debt (instead of just the borrower's loan debt) in determining eligibility for the IBR plan.

*Discussion:* This issue was raised during the negotiated rulemaking sessions to develop the proposed regulations and was discussed in the preamble to the NPRM (73 FR 37698–37699). As the Department noted in that discussion, section 493C(a) of the HEA provides that only the borrower's loan debt is considered when determining whether the borrower has a partial financial hardship. Moreover, section 493C(d) of the HEA specifically provides for considering the individual AGI of a married borrower only when the borrower and his or her spouse file separate Federal tax returns. Thus, the policy advocated by these commenters would not be consistent with the HEA.

*Changes:* None.

*Comment:* A group of commenters asked the Department to confirm in the preamble to the final regulations that lenders may use the Department's National Student Loan Data System (NSLDS) to determine the number and amount of loans a borrower has that are eligible to be included in the IBR plan. The commenters said that a lender would need access to NSLDS because a borrower may choose which eligible loans he or she wants to include under the IBR plan, and a lender needs to know how much the borrower owes to other lenders to calculate the payment amount under the IBR plan.

*Discussion:* The Department agrees that lenders may use NSLDS for this purpose.

*Changes:* None.

*Comment:* Several commenters indicated that the IBR regulations for monthly payments of \$0.00 and \$10.00 were clear in the proposed regulations except when the borrower's eligible loans are held by multiple lenders. The commenters recommended that when there are multiple lenders, the application of the IBR regulations for monthly payments of \$0.00 and \$10.00 should apply at the lender level rather than at the borrower level.

*Discussion:* We agree.

*Changes:* Sections 682.215(b)(1)(ii) and (iii) and 685.221(b)(2)(ii) and (iii) have been revised to provide that the \$0.00 and \$10.00 monthly payment regulations also apply when the borrower has multiple loan holders.

*Comment:* Several commenters asserted that the NPRM did not clearly state when the three-year period during

which the Secretary pays a borrower's unpaid accrued interest under the IBR plan would begin. The proposed regulations stated that this period would begin on "the date the borrower initially began repayment on each loan under the income-based repayment plan". The commenters recommended that the regulations specify that this period begins with the established payment period start date on the loan. The commenters also stated that it was unclear under the proposed regulations whether the amount of the subsidy payment on behalf of the borrower was based on the borrower's monthly scheduled payment amount or the borrower's actual payment amount, and recommended that the subsidy payment be based on the borrower's actual payment. In addition, several commenters recommended that the regulations clarify that the 3-year interest subsidy period excludes any period during which the borrower receives an economic hardship deferment.

*Discussion:* The Department agrees that the "established payment period start date" is the appropriate date for beginning the three-year period during which the Secretary pays interest on the borrower's behalf. The Department also agrees that the regulations should reflect the provision in section 493C(b)(3) of the HEA that excludes periods of economic hardship deferment from the 3-year subsidy period. The Secretary disagrees, however, that the subsidy payment amount should be based on the actual payment of the borrower rather than the borrower's monthly scheduled payment amount. A borrower's scheduled monthly payment amount, regardless of whether it covers accrued interest, is the borrower's payment obligation. During the 3-year period, the Department's obligation under the law is to pay only the amount of unpaid accrued interest that is not the borrower's obligation to pay during this period.

*Changes:* Sections 682.215(b)(4) and 682.300(b)(1)(iv) have been amended to clarify that the 3-year period during which the Secretary will pay interest for a borrower under the IBR plan begins on the borrower's established repayment period start date and excludes any period during which the borrower receives an economic hardship deferment. Similar changes have also been made to § 685.221(b)(2) for the Direct Loan Program.

*Comment:* Several commenters noted that there are three types of repayment amounts calculated under the IBR plan. The first repayment amount is calculated to determine whether a

borrower has a partial financial hardship and is the annual payment amount calculated for a 10-year repayment period under § 682.209(a)(6)(vi) of the FFEL Program regulations and is based on the loan balance outstanding when the borrower initially entered repayment on the loan. The second calculated payment amount is the maximum monthly payment amount calculated when a borrower no longer has a partial financial hardship or no longer wishes to make IBR based payment amounts but stays within the IBR plan, and is based on a 10-year repayment period using the loan balance outstanding when the borrower began repayment on the loan under the IBR plan. The third payment amount is calculated when the borrower elects to leave the IBR plan entirely and is calculated, for a Stafford Loan, on the time remaining on a 10-year repayment period using the borrower's outstanding balance on the loan when the borrower discontinued paying under the IBR plan, and for a Consolidation Loan, on the remaining repayment period using the borrower's outstanding balance on the loan and on other student loans that were outstanding when the borrower discontinued paying under the IBR plan. During the negotiated rulemaking process, the non-Federal negotiators from the FFEL industry used the terms *standard-standard*, *standard-permanent*, and *standard-expedited* to designate these three calculated amounts and the commenters recommended that the Department incorporate these terms into the regulations for ease of understanding.

*Discussion:* The Department thanks the commenters for suggesting these terms. However, these terms are not used in the HEA and the Department does not believe that they should be used in the program regulations. These terms may be used for illustrative and training purposes in nonregulatory guidance.

*Changes:* None.

*Comment:* Several commenters recommended that we include preamble language to clarify that the \$50 minimum payment rule that generally applies in the FFEL Program would apply to the monthly payment calculated when a borrower no longer has a partial financial hardship. These commenters also believed that the proposed regulations regarding the maximum monthly payment amount could be interpreted to give the borrower the discretion to make a lower payment. They recommended that we clarify the regulations to specify that the loan holder, not the borrower, determines this payment amount.

*Discussion:* We agree that the minimum monthly payment of \$50 applies when the borrower no longer has a partial financial hardship. We also agree that the maximum monthly repayment amount is an amount determined by the loan holder, not by the borrower, based on a FFEL standard repayment plan with a 10-year repayment period.

*Changes:* Section 682.215(d)(1)(i) has been revised to clarify that the loan holder determines the monthly payment amount.

*Comment:* Several commenters recommended that the regulations in proposed § 682.215(c)(3) that require a loan holder to apply any prepayment amount or any amount that exceeds the monthly payment amount consistent with the requirements of § 682.209(b)(2)(ii) and which would advance the borrower's payment due date under certain circumstances, should not apply when a borrower's monthly payment amount is \$0.00.

*Discussion:* We agree that there is no need to advance the next monthly due date under 34 CFR § 682.215(c)(3) when a borrower sends in a prepayment at a time when the borrower's monthly payment amount is \$0.00. The prepayment amount should be applied in the order specified in § 682.215(c)(1): interest, collection costs, late charges, and loan principal.

*Changes:* Section 682.215(c)(3) has been revised to clarify that the requirement to advance a payment due date applies only when the prepayment amount equals or exceeds the monthly payment amount of \$10.00 or more. We also have added a new § 682.215(c)(4) to clarify that when the prepayment amount exceeds the monthly payment amount of \$0.00, the prepayment amount is applied consistent with § 682.215(c)(1).

#### *Documentation and Verification Requirements*

*Comment:* Under the proposed regulations, if a borrower selects the IBR plan, but does not provide or renew the required written consent for income verification, or withdraws consent and does not select another repayment plan, the lender places the borrower in the IBR plan, and the borrower is required to make payments based on a 10-year FFEL standard repayment plan. Several commenters recommended that the Department revise the regulations to clarify that if a borrower requests IBR, but does not provide documentation to prove partial financial hardship, then the request must be denied and the borrower must remain in his current

repayment plan or choose another plan for which he is eligible.

*Discussion:* The regulations address the impact of a borrower's failure to submit required documentation for the IBR plan in two places. Under § 682.209(a)(6)(v)(C), a lender must deny a borrower's request for an IBR repayment schedule if the borrower does not submit the required documentation within the time specified by the lender. The provisions in §§ 682.215(e)(2)(i) and 685.221(e)(2)(i) that are discussed by the commenters apply only to borrowers who are already in the IBR plan, but in a subsequent year fail to renew their written consent for income verification. We agree to revise the regulations to clarify this distinction.

*Changes:* Sections 682.215(e)(2)(i) and 685.221(e)(2)(i) have been revised to clarify that if a borrower who is already in the IBR plan fails to renew his or her consent for income verification, the loan holder treats the borrower in the same way as a borrower who no longer has a partial financial hardship.

*Comment:* The proposed regulations require a loan holder to determine whether a borrower has a partial financial hardship each year the borrower is in the IBR plan. Several commenters argued that a borrower who no longer has a partial financial hardship but remains in the IBR plan should not be required to provide partial financial hardship eligibility documentation for subsequent years.

*Discussion:* Section 493C(c) of the HEA requires a loan holder to verify each year that a borrower has a partial financial hardship and is eligible for IBR. The regulations must reflect this requirement.

*Changes:* None.

*Comment:* Under the proposed regulations, in determining whether a borrower has a partial financial hardship, the family size determination defaults to one for any year for which a borrower does not certify family size. Some commenters suggested that family size default instead to the family size previously certified by the borrower.

*Discussion:* The Department believes that defaulting to the prior year's family size would be a disincentive for borrowers in the IBR plan to provide to loan holders timely, updated information on their family size. Moreover, allowing family size to default to the borrower's family size for the prior year would increase Federal costs and would require a budgetary offset.

*Changes:* None.

### *Processing Loan Forgiveness in the IBR Plan*

*Comment:* Under the proposed regulations, if a borrower leaves the IBR plan, the borrower must pay under the FFEL standard repayment plan, and the lender recalculates the borrower's monthly payments based on the time remaining in the standard 10-year repayment period. Several commenters believed the time that the borrower is in the IBR plan should be treated like a deferment or forbearance and should not be counted towards the 10-year repayment period. These commenters argued that borrowers should have the option to switch out of the IBR plan to any repayment plan for which they are eligible—not just the FFEL standard repayment plan—and effectively have a full repayment period available to them after leaving the IBR plan.

*Discussion:* Section 493C(b)(8) of the HEA specifies that a borrower who is repaying a loan under the IBR plan may, at any time, terminate repayment under the IBR plan and “repay such loan under the standard repayment plan.” The law does not give the borrower the option to choose a different repayment plan when terminating repayment under the IBR plan. Nor is there authority in the HEA to treat the borrower's time in the IBR plan as a deferment or forbearance that is excluded from the repayment period. However, the HEA does not require that borrowers stay in the standard 10-year repayment plan for the remaining life of the loan. As with any other borrower in the FFEL and Direct Loan programs, these borrowers may request a change in repayment plan no more frequently than annually as provided in the HEA. However, since the maximum repayment periods under other FFEL and Direct Loans repayment plans, except extended repayment and Consolidation, are 10 years, in most circumstances the repayment options for the borrower will be severely limited depending on the period of time the borrower remained in the IBR plan.

*Changes:* None.

*Comment:* Several commenters stated that they believe that under the HEA any borrower payment that is not less than either the payment calculated based on a 10-year repayment plan using the outstanding balance when the borrower began repayment, or the payment based on a 10-year repayment plan using the outstanding balance when the borrower first began IBR, should count toward the 25-year forgiveness period. The commenters asked that this reading of the HEA be reflected in the regulations.

*Discussion:* Section 493C(b)(7) of the HEA specifically lists the types of payments and payment plans that qualify the borrower for IBR loan forgiveness. Only payments made under the specified repayment plans and for the stipulated amounts count toward the 25 year period for forgiveness.

*Changes:* None.

*Comment:* The loan holder must request payment from the guaranty agency no later than 60 days after the loan holder determines that the borrower qualifies for loan forgiveness. Several commenters noted that the actual date a borrower qualifies for loan forgiveness under the IBR plan is a date the lender tracks, and recommended that that date be the start date for the 60-day filing period, rather than the date the lender makes the determination that the borrower qualifies, as provided for in the proposed regulations.

*Discussion:* We disagree with the commenters' recommendation. In the case of other loan discharges under the HEA, the trigger date for lender filing deadlines is the date the lender makes a determination of the borrower's eligibility, or the date the borrower submits a written request for discharge. The trigger date is not the actual date that the borrower became eligible for the discharge. We believe that IBR loan forgiveness should be treated similarly to loan discharges in this regard, with the 60-day filing period beginning on the date the lender determines that the borrower qualifies for loan forgiveness.

*Changes:* None.

*Comment:* Several commenters urged the Department to provide specific guidance regarding qualifying loan payments for the 25-year IBR loan forgiveness in light of the HEOA change to the HEA that excludes defaulted borrowers from IBR. The commenters asked whether all pre-default, post-default, and loan rehabilitation payments would count towards satisfying the 25-year payment requirement.

*Discussion:* When a borrower defaults on a loan, the loan is immediately due and payable in full. Any payments made by a borrower to the holder of the defaulted loan are not made under an authorized repayment plan. Payments made under a rehabilitation agreement with the holder are payments made on a defaulted loan. The Department believes that the result of the change made by the HEOA is that only pre-default payments will be considered qualifying payments for the purpose of the 25-year IBR forgiveness, unless the borrower is in an authorized post-default IBR plan on a defaulted loan held by the Department. However, a

borrower repaying under the IBR plan who defaults, then successfully rehabilitates the defaulted loan, and then returns to IBR on the rehabilitated loan would simply resume the 25-year repayment period for forgiveness.

*Changes:* Section 682.215(f) has been revised to specify that payments made on a defaulted loan are not made under a qualifying repayment plan and therefore, do not count toward the 25-year forgiveness period. A conforming change has been made to § 685.221(f).

*Comment:* Several commenters recommended that the regulations specify that a holder must promptly return any payment received on a loan after the guaranty agency pays the holder the forgiveness amount.

*Discussion:* We agree.

*Changes:* We have added a new § 682.215(g)(8) to the regulations, to read: “The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.”

*Comment:* Under the proposed regulations, a loan holder must provide the borrower with information on the required handling of the forgiveness amount. Some commenters requested that the Department clarify in the preamble that it is inappropriate for a holder to provide tax advice and that holders could comply with the regulatory requirement by directing the borrower to the IRS Web site or to IRS Publication 970 for more information. The commenters also pointed out that this provision is not in the corresponding section in the Direct Loan program regulations.

*Discussion:* A loan holder is expected to make a general disclosure to the borrower on what it believes to be the current tax treatment of such amounts and is encouraged to refer borrowers to the IRS for further information. The Department will provide similar information to Direct Loan borrowers but the Direct Loan program regulations do not need to be amended since the Secretary does not issue regulations to govern the Department.

*Changes:* None.

*Comment:* The proposed regulations provide that if a guarantor does not pay an IBR loan forgiveness claim, the lender resumes collection activity on the loan. Several commenters requested that we specify that the lender may capitalize the interest that accrued but was not paid on the loan for the period during which the borrower's obligation to repay the loan was suspended.

*Discussion:* In general, we agree that interest that accrued during the period when collection on the loan is

suspended while the loan forgiveness claim is being processed should be capitalized. However, the loan holder should not benefit if the loan holder submits the claim for forgiveness in error. Therefore, we have modified the regulations to provide for capitalization only if the forgiveness claim is not submitted by the lender in error.

*Changes:* Section 682.215(g) has been revised by adding the following sentence: “Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.”

*Eligible Not-for-Profit Holder Definition (§ 682.302(f)(3))*

*Comment:* On the issue of determining when a for-profit controls a not-for-profit holder, several commenters representing FFEL industry members stated that a distinction made in the preamble to the NPRM between family members employed as lower level employees at a not-for-profit loan holder and those employed in more responsible positions is not reflected in the regulations. The commenters believed that the proposed regulations relating to a for-profit entity exercising control over a State or non-profit entity leave to the discretion of the Secretary the determination of whether the nature of a family member’s employment is likely to affect the integrity of decisions made by a non-profit entity’s boards or committee. The commenters pointed out that in very large organizations someone could be in a “responsible position” but have no influence or control over student loans. The commenters asked the Department to clarify that the Secretary has the discretion to determine whether a family member could be employed at a non-profit organization in a responsible position unrelated to student loans.

*Discussion:* The Department agrees that the proposed regulations do not draw any distinction based on the level of a family member’s employment in determining whether that employment or appointment by a for-profit entity constitutes control of the non-profit entity. We note, however, that § 682.302(f)(3)(vi)(B) assumes that the employment or appointment of a family member at any level of employment constitutes controlling influence of the non-profit entity unless the Secretary specifically determines otherwise. The Secretary will examine, among other factors, the family member’s level of employment or appointment in determining whether that employment

affects the integrity of the non-profit entity’s decisions.

*Changes:* None.

*Comment:* Several commenters representing FFEL industry participants noted that State and non-profit entities are often required to create and use special purpose entities in connection with financing the origination or purchase of FFEL Program loans. This kind of special purpose entity is often called a “bankruptcy remote vehicle” because, although it was created by, and may appear to be a subsidiary or affiliate of, the State or non-profit entity, its asset and liability structure and its legal structure and status make its obligations secure in the event of the bankruptcy of the non-profit entity parent or guarantor. Such a special purpose entity is separate from the State or non-profit entity. By complying with various criteria established by bond rating agencies or lenders that support its bankruptcy remote status, its loans and other assets are viewed as sufficiently protected from claims by creditors of the State or non-profit entity in the event of such a bankruptcy. The commenters noted that the Department has previously taken the position that an eligible lender trustee may qualify as an eligible not-for-profit holder when it is acting on behalf of a special purpose entity related to a State or non-profit entity, even though the special purpose entity—and not the State or non-profit entity—held beneficial or legal ownership, or both, of the loans. The proposed regulations as drafted would have disqualified loans for which a State or non-profit entity was not the sole beneficial owner. Commenters asked that the Department specify in the final regulations that the Department considers loans that would qualify for the higher special allowance payment (SAP) rate if owned directly by an eligible not-for-profit holder that is a State or non-profit entity will qualify for that rate if now owned solely by its related special purpose entity.

*Discussion:* The Department acknowledges that the use of a special purpose entity, sometimes called a “bankruptcy remote vehicle,” is often a required element of financing FFEL program loan originations and purchases by State and non-profit entities. Because the special purpose entity holds beneficial or legal ownership, or both, of the loans originally acquired by the not-for-profit holder, the Department believes the regulations, as proposed, should be revised for two reasons. First, the proposed regulations have been revised to ensure that loans acquired by a State or non-profit entity that is an eligible

not-for-profit holder but which are now held by a special purpose entity qualify for the higher SAP rate. Second, changes have been made to apply to the special purpose entity used by a not-for-profit holder the same tests that apply directly to the State or non-profit entity.

The final regulations apply without regard to whether a particular special purpose entity is sufficiently remote from the State or non-profit entity to insulate the former from the claims that might be asserted in the bankruptcy of the latter. Similarly, the regulations apply without regard to whether a particular special purpose entity is a “qualifying SPE” under Financial Accounting Standards Board Statement No. 140.

*Changes:* We have amended the regulations to address a not-for-profit holder’s use of a special purpose entity.

*Public Service Loan Forgiveness*

Most of the comments received by the Department in response to the NPRM pertained to the public service loan forgiveness program. A majority of those comments were from law schools, law students, legal aid centers, clinics, and associations, public interest attorneys and public defenders. The commenters overwhelmingly supported the program because it would provide relief to borrowers who choose charity and other public service and nonprofit employment, and because they believe it will prove to be an important tool for attracting graduates and retaining talented employees in critical jobs that support our society’s well-being. The specific comments are discussed below.

*Borrower Eligibility*

*Comment:* Some commenters working at nonprofit or governmental organizations noted that the loan forgiveness program became effective on October 1, 2007, and asked that payments made on their loans and service performed before that date be counted toward satisfying the loan forgiveness requirements.

A few commenters who are borrowers of joint FFEL Program consolidation loans asked whether they could reconsolidate that loan either jointly or separately into the Direct Loan program to qualify for the public service loan forgiveness benefit.

A Peace Corps official asked that Peace Corps service be considered qualifying service for public service loan forgiveness and be treated in the same manner as service in full-time AmeriCorps positions, including counting payments made during Peace Corps service as qualifying payments for loan forgiveness. The commenter stated

that even though individuals serving in the Peace Corps are not considered Federal government employees, they are treated as such for certain purposes, such as retirement and under the Federal Employees Compensation Act.

*Discussion:* The CCRAA establishes October 1, 2007, as the effective date for the beginning of the public service loan forgiveness program and requires that a borrower's qualifying payments be made while the borrower is providing the qualifying full-time service.

Consequently, periods of service or payments made on an eligible loan prior to the October 1, 2007, effective date do not count towards the requirements for loan forgiveness.

The HEA authorizes borrowers to consolidate their FFEL Program loans into the Direct Loan program for the purpose of public service loan forgiveness. However, there is no authority to make new joint consolidation loans in either the FFEL or Direct Loan programs. In taking out a joint consolidation loan, both borrowers become jointly and severally liable for the repayment of the full amount of the loan. There is no statutory authority to allow one of the borrowers to assume the entire joint consolidation debt or for the borrowers to somehow separate the joint consolidation loan into separate individual loans. Therefore, borrowers with joint FFEL consolidation loans cannot become eligible for the public service loan forgiveness program.

The Department agrees with the commenter that individuals serving in the Peace Corps perform valuable public service on behalf of their fellow citizens and that they should be treated like borrowers serving in AmeriCorps positions. However, under the HEA, to qualify for forgiveness, the borrower must be making payments while performing public service. Unlike a borrower serving in a full-time AmeriCorps position, a borrower serving full-time in the Peace Corps is eligible for an economic hardship deferment for the entire period of the borrower's Peace Corps service and has no obligation to make payments. Additionally, the Peace Corps does not provide an educational benefit that the borrower can choose to use to repay title IV student loans, but instead provides an individual leaving Peace Corps service with a lump sum transition allowance. Given these circumstances, the Department has determined that an individual serving in the Peace Corps may meet the loan forgiveness payment requirement in one of two ways: (1) By declining the economic hardship deferment and making scheduled

payments on the loan during the service period; or (2) by making a lump sum payment on the loan from the Peace Corps transition allowance no later than six months after the borrower's receipt of those funds. A lump sum payment on a title IV loan from Peace Corps transition funds will be treated like a payment made from an AmeriCorps borrower's Segal Education Award in determining the number of the borrower's qualifying payments.

*Changes:* Section 685.219(b) has been amended to include a definition of a Peace Corps position, § 685.219(c)(1)(ii) has been amended to include a reference to a Peace Corps position, and § 685.219(c)(2) has been amended to apply the treatment of lump sum payments to a payment made from Peace Corps transition funds.

#### *Documenting and Maintaining Eligibility*

*Comment:* Many commenters asked the Department to develop a clear and simple method for the borrower, the employer, or both, to determine annually the borrower's eligibility for public service loan forgiveness (i.e., that the borrower's employment was with an eligible employer and that the borrower was paying under an acceptable repayment plan). The commenters stated that they believed strongly that borrowers should not be left in the dark regarding whether they would qualify for loan forgiveness by applying and documenting their eligibility after 10 years of service and repayment. The commenters noted that this approach would require the borrower to retain pay stubs or other supporting documentation of their employment for the entire 10-year period. The commenters believed that this recordkeeping obligation would be too great of a burden to impose on recent graduates. The commenters also believed that ongoing information on the borrower's eligibility is important for the borrower's career and financial decisions. The commenters recommended that the Department create an on-line, password-protected system through which qualifying employers could annually certify the employment of borrower-employees, or otherwise provide a reliable system for borrowers to document, confirm, and track job eligibility. Some of these commenters also asked that we establish a program of employer pre-certification under which the Department would maintain an ongoing list of certified eligible employers for borrower reference. One commenter disagreed with the Department's position in the NPRM that implementing such a system

was an operational rather than a regulatory issue, and asked that a system for annual eligibility verification be reflected in the regulations. Another commenter stated that it was preferable to require a borrower to submit past pay stubs, direct deposit salary documents, or wage and salary statements (W-2s) rather than require the employer to provide some certifying document of the borrower's dates of employment.

Many commenters urged the Department to incorporate the public service loan forgiveness program as a term and condition in the Department's Direct Loan master promissory note (MPN). The commenters believed that making this change to the MPN would prevent Congress from repealing the forgiveness benefit after borrowers have spent years working to meet the eligibility requirements.

Another commenter recommended that the Direct Consolidation Loan application and the public service loan forgiveness application be combined so that no gap exists in the student's ability to consolidate and then pursue public service loan forgiveness.

Other commenters representing participants in the FFEL industry requested that the Department's procedures for eligibility determinations and notification to borrowers who are not eligible for loan forgiveness under this program be spelled out in greater detail consistent with the approach in § 685.216(e)(4).

*Discussion:* The Department believes that the way in which borrowers apply for and document their eligibility for the public service loan forgiveness benefit is best handled administratively. We assure the commenters that we will continue to examine ways to assist borrowers who are interested in, or already employed in public service, to determine and document their eligibility for the loan forgiveness program.

The Department will develop a form for borrowers to use to apply for the public service loan forgiveness when the borrower believes he or she qualifies. The proposed form will be subject to public comment under the Paperwork Reduction Act of 1995. As with other discharge applications the Department has developed, the form will include all the information the borrower and the borrower's employer need regarding the eligibility criteria, applicable definitions, and procedures for applying for the loan forgiveness benefit. The form will include an employer certification section and instructions regarding supporting documentation that the Department will need to determine the borrower's

eligibility for the forgiveness benefit. The borrower will be able to use this form to collect a certification from his or her employer either annually or at the close of the 120-payment qualifying period. The form will also be used for certification for borrowers who have more than one employer. The Department expects the borrower to collect and retain the necessary records that support the borrower's eligibility for this benefit. This policy is consistent with the general practice in the student loan programs—borrowers are always responsible for collecting and maintaining records to support their receipt of benefits under the programs.

With regard to incorporating a description of the public service loan forgiveness benefit in the MPN, the Department is already taking steps to refer to the program in the MPN and other program documents. However, the MPN will continue to state, as it currently does, that the terms and conditions of the loans are subject to the HEA as it is amended in accordance with the effective date of those amendments. Although there is no history in the program of Congress eliminating or reducing a borrower benefit, the Department does not believe that a reference to the public service loan forgiveness program in the MPN would provide the borrower with a contractual right to the benefit should Congress take action to eliminate that benefit from the HEA as of a particular effective date.

The Department declines to modify the Direct Loan Consolidation Application to include the application for public service loan forgiveness. Unless the borrower is a FFEL borrower, he or she is not required to consolidate to receive the public service loan forgiveness benefit. Additionally, even if a borrower consolidates, the borrower may not be eligible to apply for the loan forgiveness benefit until many years after the consolidation, if at all. The Department agrees that it is appropriate to provide more detail in the regulations, consistent with what is provided for other loan discharges, on the procedures it will follow after determining a borrower's eligibility and when notifying the borrower of his or her ineligibility.

*Changes:* We have revised § 685.219(e)(3) to specify that if the Secretary determines that the borrower is not eligible for the public service loan forgiveness, the Secretary will notify the borrower of that decision, provide the basis for the denial, and inform the borrower that the Department will resume collection of the loan. The Secretary will grant forbearance on the

loan for any period during which collection activity was suspended while the Secretary was considering the borrower's application and may capitalize any interest that accrued and was not paid during that period.

### Definitions

#### *Full-Time*

*Comment:* Some commenters requested that reference to an employer's full-time employment standard in the definition of "full-time" for public service employment be eliminated because it penalizes borrowers whose employers require more than 30 hours per week. Some commenters also requested that we define full-time employment so that individuals are able to count multiple eligible part-time public service jobs toward the full-time requirement and eliminate any conflict that may arise if any of the part-time employers use a different full-time standard.

One commenter asked that the definition be amended to specify that leave taken under a condition covered by the Family and Medical Leave Act of 1993 (FMLA) does not constitute a break or have the effect of reducing the borrower's annual average to below 30 hours per week, or below the employer's full-time standard.

*Discussion:* The Department understands that some borrowers whose employers have a standard for full-time employment greater than 30 hours per week may believe that they are being unfairly penalized. The Department believes, however, that the forgiveness benefit is intended to acknowledge full-time employment and that it is appropriate to use an employer's standard when an employer has a full-time employment standard.

We agree that a borrower who is working part-time in more than one public service job cannot be held to more than one full-time standard in fulfilling the full-time requirement. We also agree that leave taken under conditions covered by the FMLA should not result in the borrower failing to meet the 30 hours per week annual average or the employer's full-time standard.

*Changes:* We have revised the definition of full-time in § 685.219(b) to apply the 30 hours per week annual average as the governing full-time standard when a borrower is working in more than one qualifying job and to specify that leave taken for a condition that is a qualifying reason for leave under the FMLA does not count in determining whether a borrower meets the full-time definition.

#### *Public Service Organization*

*Comment:* Some commenters asked that the definition of government employee be clarified to specifically include employees of intergovernmental or public regional agencies, and to include a public primary, secondary, or higher education institution, district, or system.

A few commenters recommended that "public health" be defined in the manner provided in the U.S. Health Code, title 42, chapter 6A, Public Health Service, subchapter XVIII, part E, subsection 1395X to include: Doctors of Medicine and Osteopathy, Doctors of Chiropractic, Doctors of Dental Surgery and Dental Medicine, Doctors of Optometry and Doctors of Podiatric Medicine. The commenters believed that this level of specificity was necessary because the public health sector includes both non-profit entities that have doctors on their staff and for-profit providers such as doctors in private practice.

Several commenters recommended that contract employees who serve organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code should be considered as employees of a public service organization. Another commenter claimed that the proposed regulations improperly excluded employment that is within the statutory definition such as for-profit businesses, private law firms that provide defense for indigents through state funding, and non-profit non-governmental organizations that do not qualify under section 501(c)(3) of the Internal Revenue Code. The commenter stated that the regulations should specify that Interest on Lawyers' Trust Accounts (IOLTA) funding would be considered public funding for purposes of meeting the requirement of being "funded in whole or in part by a local, State, Federal, or Tribal government", and took exception to the exclusion of labor unions from eligibility as without justification if the labor union otherwise meets appropriate standards for a public service organization.

*Discussion:* As the Department indicated in the preamble to the NPRM (72 FR 37705), the definition of "public service organization" is derived from the statutory definition of "public service job" in section 455(m)(3)(B) of the HEA, and is intended to identify broad categories of eligible jobs rather than define specific jobs under those categories. An intergovernmental or public regional agency would appear to be encompassed under "Federal, State, local, or Tribal government

organization, agency, or entity” depending on its governance and the funding source for salaries. Employees of public and private, non-profit elementary, secondary, and postsecondary schools would be covered either as employees of a government organization, agency, or entity or of a private organization that provides public education. Employees of tribal colleges and universities are specifically listed as eligible in the HEA. Contract workers at these institutions who are not paid by the institution, but are paid by a for-profit company contracted to provide certain services to the institution would not be covered.

As part of the HEOA, Congress recently added a clarifying non-exhaustive list of examples of qualified “public health” jobs to section 455(m)(3)(B) of the HEA. We have incorporated those examples into these final regulations.

Non-profit organizations that do not qualify under section 501(c)(3) of the Internal Revenue Code may nonetheless qualify as a private organization that provides qualifying public services.

We do not believe it is appropriate to make employees of for-profit firms receiving IOLTA funding specifically eligible for the public service loan forgiveness program. These employees are not employees of a government agency and are not likely to work full-time at a public service job.

The Department continues to believe that the term “public sector jobs” does not encompass every job. The nature of the employer and the funding source of salaries are appropriate considerations.

*Changes:* None.

#### *Tax Status of Forgiven Amounts*

*Comment:* One commenter asked the Department to clarify ambiguities related to the tax status of the amount of loans forgiven under the public service loan forgiveness program.

*Discussion:* Section 108(f) of the Internal Revenue Code provides that amounts discharged on loans made by a governmental entity can be excluded from the borrower’s income if the discharge was for work “in certain professions for any broad range of employers.” 26 U.S.C. 108(f). The Internal Revenue Service has not issued any determination of whether work that qualifies an individual for public service loan forgiveness under section 455(m) of the HEA would qualify under 26 U.S.C. 108(f), and the Department does not have the legal authority to make such a determination here.

*Changes:* None.

#### **Executive Order 12866**

##### *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether the regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is “economically significant” and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

##### *Need for Federal Regulatory Action*

As discussed in the NPRM, these final regulations are needed to implement provisions of the HEA, as amended by the CCRAA, that established a new IBR plan for FFEL and Direct Loan borrowers, revised the conditions under which a FFEL or Direct Loan borrower could qualify for a loan deferment due to economic hardship, changed the terms of a number of military service deferments, created a loan forgiveness program in the Direct Loan Program for borrowers who perform public service, and established a separate special allowance rate formula for not-for-profit loan holders in the FFEL Program. The *Regulatory Impact Analysis* portion of the NPRM discussed areas where the Secretary has exercised limited discretion in implementing the CCRAA provisions.

These final regulations also implement changes made to two of the regulations to reflect changes made by the HEOA. However, the changes only incorporate statutory changes and do not involve any exercise of discretion by the Secretary.

##### *Regulatory Alternatives Considered*

A broad range of alternatives to the regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the Regulatory Impact Analysis and the Reasons sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, the final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

##### *Net Budget Impacts*

As noted in the NPRM, the CCRAA provisions implemented by these regulations are estimated to have a net budget impact of \$650 million in 2008 and \$9.2 billion over FY 2008–2012. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.) Details on how these estimates were developed are provided in the *Regulatory Impact Analysis* portion of the NPRM.

##### *Assumptions, Limitations, and Data Sources*

Because these regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the CCRAA changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used,

including data from the National Student Loan Data System, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the Census Bureau, were also used. No comments or additional data were received related

to the estimates or discussions included in the NPRM.

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.

*Accounting Statement*

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 2 below, we

have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for the IBR, loan deferment, and loan forgiveness provisions) and from student loan holders to the Federal government (for the SAP provisions).

**TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES**

Category	Transfers	Transfers
Annualized Monetized Transfers	3%	7%.
Federal Government to Student Loan Borrowers	\$1.292 billion	\$1.357 billion.
Federal Government to Student Loan Holders	\$580 million	\$568 million.
<b>Total</b>	<b>\$1.872 billion</b>	<b>\$1.925 billion.</b>

*Regulatory Flexibility Act Certification*

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These final regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define these 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. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered “small entities” under the Regulatory Flexibility Act. Individuals are also not defined as “small entities” under the Regulatory Flexibility Act.

As noted in the NPRM, a significant percentage of the lenders and schools participating in the Federal student loan programs meet the definition of “small entities.” While these lenders and schools fall within the SBA size guidelines, the final regulations do not impose significant new costs on these entities.

In the NPRM the Secretary invited comments from small institutions as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, requests evidence to support that belief. No comments or data were received.

**Paperwork Reduction Act of 1995**

Sections 674.34, 682.205, 682.209, 682.210, 682.211, 682.215, 682.302, 685.204, 685.205, 685.219, 685.220, and 685.221 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Sections 674.34(h)–(i), 682.210(t)–(u), and 685.204(e)–(f)—Deferment of Repayment—Federal Perkins Loan, NDSLs, Defense Loans, FFEL, and Direct Loans.

The final regulations amend the provisions related to the military service deferment and the post-active duty student deferment in the Federal Perkins, FFEL, and Direct Loan Programs.

The final regulations regarding the post-active duty student deferment would result in an increase in the burden hours associated with the current Federal Perkins/FFEL/Direct Loan military deferment request form cleared under OMB Control Number 1845–0080. The current military deferment request form covers only the military service deferment. The form will be revised to cover both the military service deferment and the post-active duty student deferment. The Department expects to submit a revised deferment request form for clearance by November 2008.

**Section 682.205(h)—Disclosure Requirements for Lenders**

These final regulations provide that, at the time of offering a borrower a loan and at the time of offering a borrower

repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of the income-sensitive and the IBR repayment plans, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans. This information may be provided in a separate notice or as part of the other disclosures required by this section.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.205 and the associated collection, OMB Control No. 1845–0020.

**Section 682.209(a)—Repayment of a Loan**

The final regulations would add the IBR plan as a repayment option for FFEL borrowers and require lenders to take certain actions when a borrower fails to select a repayment plan within 45 days after being notified by the lender to choose a repayment schedule.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.209 and the associated collection, OMB Control No. 1845–0020.

**Section 682.211(f)—Forbearance**

The final regulations would provide for a period of forbearance, not to exceed 60 days, necessary for the lender to collect and process documentation supporting the borrower’s eligibility for loan forgiveness under the IBR plan. The lender must notify the borrower

that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

The addition of this new type of forbearance under the IBR plan is estimated to increase the burden hours for lenders and guaranty agencies by 31,414 hours under OMB Control Number 1845-0020. (**Note:** This is an administrative forbearance and does not require an OMB-approved form.)

#### **Section 682.215—Income-Based Repayment Plan**

The final regulations provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower's aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the loan holder must recalculate the borrower's monthly payment amount. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under a standard repayment plan as calculated by the loan holder.

The final regulations provide that a loan holder would require the borrower, in order to establish his or her eligibility for the IBR plan, to provide written consent to the disclosure of AGI and other tax return information by the IRS to the loan holder. The borrower also would be required to annually certify his or her family size; otherwise the loan holder would assume a family size of one. To determine whether a borrower qualifies for loan forgiveness after 25 years, the loan holder must make a determination that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or, that, through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments. The loan holder is required, no later than 60 days after it makes the determination that the borrower is eligible for loan forgiveness, to request payment from the guaranty agency. Within 45 days of receiving the loan holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness and must notify the loan holder. If the guaranty agency determines that the borrower is eligible for loan forgiveness,

it must pay the loan holder within the same 45-day period. The holder must notify the borrower within 30 days of being notified by the guaranty agency of its determination on the borrower's eligibility.

We estimate that the final regulations will increase burden for borrowers, lenders and guaranty agencies by 185,778 hours, under new OMB Control Number 1845-0086.

#### **Section 682.302(f)—Eligible Not-for-Profit Holder**

The final regulations would require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for-profit designation is being certified. For an entity establishing non-profit status under section 150(d) of the Internal Revenue Code, the submission must include copies of the requests of the State or political subdivision or subdivisions thereof, or requirements described in section 150(d) of the Internal Revenue Code, and the CEO's additional certification that the entity has not elected to cease its status as a qualified scholarship funding corporation. A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, must be submitted with supporting documentation that shows that the State or non-profit entity is a constituted State entity by operation of specific State law, has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation, and is incorporated under State law as a not-for-profit organization, or is an entity described in section 501(c)(3) of the Internal Revenue Code, or has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

Under the final regulations, once an entity has been approved as an eligible not-for-profit holder, the entity must provide to the Secretary an annual certification on the State or non-profit entity's letterhead signed by the CEO, which includes the name and lender identification number(s) of the entities

for which designation is being recertified. The annual certification must state that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary and that it continues to satisfy the requirements of an eligible not-for-profit holder either in its own right or through a trust agreement with an eligible lender trustee. A copy of its IRS Form 990—Return of Organization Exempt From Income Tax, if applicable, must be submitted at the same time the entity files that return with the IRS as a part of the annual certification.

Within 10 days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must submit details of the change to the Secretary.

We estimate that the final regulations will increase burden for States, non-profit entities, and eligible lender trustees by 105 hours in the new OMB Control Number 1845-0085.

#### **Section 685.205(a)—Forbearance**

The final regulations would provide for loan forbearance for a borrower who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days.

The addition of a new type of forbearance will increase the burden hours associated with OMB Control Number 1845-0031, the Direct Loan Program General Forbearance Request form. The Department will submit a full collections package with a revised form by December 2008.

#### **Section 685.219—Public Service Loan Forgiveness**

The Public Service Loan Forgiveness Program created by the CCRAA is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their eligible Direct loans after they satisfy the public service and loan repayment requirements of this section.

The burden associated with the final regulations for this program will be reported in the paperwork clearance package for a new public service loan forgiveness application form in the new OMB Control Number 1845-XXX3 that the Department will develop.

**Section 685.220—Consolidation**

The final regulations permit a borrower to consolidate a FFEL Consolidation Loan into the Federal Direct Loan Program for the purpose of participating in the Public Service Loan Forgiveness Program.

We estimate that the expected increase in the number of FFEL Program borrowers who wish to consolidate into the Federal Direct Loan Program for the purpose of using the public loan forgiveness program will increase the burden hours associated with OMB Control Number 1845–0053 (Direct Consolidation Loan Application and Promissory Note). The Department will submit an OMB 83–C indicating the increased burden associated with this collection by October 2008.

**Section 685.221—Income-Based Repayment Plan**

The final regulations provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower’s aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which

the borrower’s AGI exceeds 150 percent of the poverty guideline for the borrower’s family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the Secretary must recalculate the borrower’s monthly payment amount. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under the standard repayment plan as calculated by the Secretary.

The final regulations provide that the Secretary requires a borrower to establish his or her eligibility for the IBR plan by providing written consent to the disclosure of AGI and other tax return information by the IRS to the Secretary. The borrower annually certifies his or her family size; otherwise the Secretary assumes a family size of one. To qualify for loan forgiveness after 25 years, a determination must be made that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or that through a combination of monthly payments and economic hardship deferments, the

borrower has made the equivalent of 25 years of payments.

The Department plans to revise the current collection approved under OMB Control Number 1845–0017, the Direct Loan Program Income Contingent Repayment Plan Consent to Disclosure of Tax Information, so that it may also be used to collect the income information needed for the Income-Based Repayment Plan. The resulting increased burden associated with OMB Control Number 1845–0017 will be reported in the paperwork clearance package for the revised form. The Department expects to submit the revised form for clearance by December 2008.

**Collection of Information**

Consistent with the discussion in this Paperwork Reduction Act of 1995 section, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections the Department has submitted, or will submit, to OMB for approval and public comment under the Paperwork Reduction Act of 1995.

Regulatory section	Information collection	Collection
674.34, 682.210, and 685.204.	This final regulation incorporates previous interpretive guidance related to the military service deferment and the active duty student deferment.	OMB 1845–0080. This is a revision of an existing collection. A separate 60-day <b>Federal Register</b> notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by November, 2008.
682.205 .....	This final regulation establishes the disclosure requirements for lenders.	OMB 1845–0020. There is no change in burden.
682.209 .....	This final regulation adds, and makes available, the income-based repayment plan to FFEL borrowers.	OMB 1845–0020. There is no change in burden.
682.211 .....	This final regulation establishes the timeframe that a lender has to collect and process required documentation.	OMB 1845–0020. This is a revision of an existing collection which is being submitted to OMB with this final regulation.
682.215 .....	This final regulation provides for the collection of a borrower’s income information from the IRS and an annual certification from a borrower who elects the income-based repayment plan.	OMB 1845–0086. This is a new collection which is being submitted to OMB with this final regulation.
682.302 .....	This final regulation requires the submission of documentation by a State, a non-profit entity, or an eligible lender trustee to the Secretary to establish eligibility for not-for-profit holder status.	OMB 1845–0085. This is a new collection which is being submitted to OMB with this final regulation.
685.205 .....	This final regulation provides for the collection of information to determine if a Direct loan borrower who is not eligible for a post-active duty student loan deferment may receive a forbearance.	OMB 1845–0031. This will be a revision of an existing collection. A separate 60-day <b>Federal Register</b> notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by December, 2008.
685.219 .....	This final regulation establishes a new Public Service Loan Forgiveness program.	OMB 1845–XXX3. This will be a new collection. A separate 60-day <b>Federal Register</b> notice will be published to solicit comment on this form once it is developed.
685.220 .....	This final regulation provides for the consolidation of FFEL loans into Direct Consolidation loans for the purpose of using the Public Service Loan Forgiveness program.	OMB 1845–0053. This will increase the burden associated with an existing collection. The increase will be reported on OMB Form 83–C by October, 2008.
685.221 .....	This final regulation provides for the collection of the borrower’s income information from the IRS and an annual certification from the borrower who elects the income-based repayment plan.	OMB 1845–0017. This will be a revision of an existing collection. A separate 60-day <b>Federal Register</b> notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by December, 2008.

### Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not 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 Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

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

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

Dated: October 15, 2008.

**Margaret Spellings**,  
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

### PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

■ 2. Section 674.34 is amended by:

■ A. In the introductory text of paragraph (e), removing the reference “(e)(6)” from the cross-reference in the parenthetical phrase that appears after the word “time” and adding, in its place, the reference “(e)(5)”, and removing the words “through (e)(6)” and adding, in their place, the words “through (e)(5)”.

■ B. In paragraph (e)(1), removing the word “FDSL” and adding, in its place, “Federal Direct Loan Program”, and adding the word “the” before the words “FFEL programs”.

■ C. In paragraph (e)(3)(ii), removing the words “poverty line applicable to the borrower’s family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act” and adding, in its place, the words “poverty guideline applicable to the borrower’s family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States”.

■ D. Removing paragraph (e)(5).

■ E. Redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) as paragraphs (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9) respectively.

■ F. In newly redesignated paragraph (e)(6), removing the words “or (e)(5)”.

■ G. In newly redesignated paragraph (e)(7), removing the words “, or (e)(5)”, removing the punctuation “,” after the reference “(e)(3)”, and adding the word “and” after the reference “(e)(3)”.

■ H. In newly redesignated paragraph (e)(8), adding “(i)” after the number “(8)”, removing the word “paragraphs” and adding in its place “paragraph”, and removing the words “and (e)(5)”.

■ I. Adding new paragraph (e)(8)(ii).

■ J. In newly redesignated paragraph (e)(9), removing the words “and (e)(5)”.

■ K. In paragraph (h)(1), adding the heading “Military service deferment” before the paragraph designation “(1)” and adding the punctuation “,” after the word “principal” and after the word “accrue”.

■ L. In paragraph (h)(4) introductory text, removing the word “section” and adding, in its place, the word “paragraph”.

■ M. Revising paragraph (h)(6).

■ N. Adding new paragraph (h)(7).

■ O. Adding a heading to paragraph (i).

■ P. In paragraph (i)(1), revising the introductory text.

■ Q. In paragraph (i)(1)(ii), adding the words “, on at least a half-time basis,” after the word “enrolled”.

■ R. Revising paragraph (i)(2).

■ S. In paragraph (i)(3), adding the words “, on at least a half-time basis,” after the word “status” each time it appears.

■ T. Adding new paragraph (i)(4).

■ U. In paragraph (j), removing the words “paragraph (j)” and adding, in their place, the words “paragraph (k)”.

The revisions and additions read as follows:

### § 674.34 Deferment of repayment—Federal Perkins loans, NDSLs, and Defense loans.

\* \* \* \* \*

(e) \* \* \*

(8)(i) \* \* \*

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

\* \* \* \* \*

(h) \* \* \*

(6) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(7) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower’s representative.

(i) *Post-active duty student deferment.*  
(1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty military service on that date, or who begins serving on or after that date, need not pay principal, and interest does not accrue for up to 13 months following the conclusion of the borrower’s active duty military service and initial grace period if—

\* \* \*

(2) As used in paragraph (i)(1) of this section "Active duty" means active duty as defined in section 101(d)(1) of title 10, United States Code, for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which the Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which the Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under both paragraphs (h) and (i) of this section, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

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

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

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

■ 4. Section 682.201 is amended by:

■ A. In paragraph (e)(3), removing the word "and" at the end of the paragraph.

■ B. In paragraph (e)(4), removing the punctuation "." at the end of the paragraph and adding, in its place, the words, "; and".

■ C. Adding a new paragraph (e)(5) to read as follows:

**§ 682.201 Eligible borrowers.**

\* \* \* \* \*

(e) \* \* \*

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using the Public Service Loan Forgiveness Program.

■ 5. Section 682.205 is amended by:

■ A. Revising the heading to paragraph (h).

■ B. Revising paragraph (h)(1).

The revisions read as follows:

**§ 682.205 Disclosure requirements for lenders.**

\* \* \* \* \*

(h) Notice of availability of income-sensitive and income-based repayment options.

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

\* \* \* \* \*

■ 6. Section 682.209 is amended by:

■ A. Revising paragraph (a)(6)(iii).

■ B. Revising paragraph (a)(6)(iv).

■ C. Revising paragraph (a)(6)(v).

■ D. Redesignating paragraphs (a)(6)(x) and (a)(6)(xi) as (a)(6)(xi) and (a)(6)(xii), respectively.

■ E. Adding a new paragraph (a)(6)(x).

■ F. In newly redesignated paragraph (a)(6)(xi), adding the words " , or at any time in the case of a borrower in an income-based repayment plan" immediately after the word "annually".

■ G. In paragraph (a)(8), adding the words " , except in the case of payments made under an income-based repayment plan." immediately after the words "five dollars" the first time those words appear.

■ H. In paragraph (b)(1), removing the word "The" at the beginning of the sentence and adding, in its place, the words "Except in the case of payments made under an income-based repayment plan, the".

■ I. In paragraph (b)(2)(ii), in the second sentence, removing the words "borrower coupon book" and adding, in their place, "borrower's coupon book".

■ J. In paragraph (c)(1)(i), removing the word "or" the first time it appears and

adding the words " , or income-based" immediately after the word "extended".

The revisions and additions read as follows:

**§ 682.209 Repayment of a loan.**

\* \* \* \* \*

(a) \* \* \*

(6) \* \* \*

(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, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower—

(A) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule;

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender; or

(C) Chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under § 682.215(e)(1)(i) within the time period specified by the lender.

\* \* \* \* \*

(x) Under an income-based repayment schedule, the borrower repays the loan in accordance with § 682.215.

\* \* \* \* \*

■ 7. Section 682.210 is amended by:

■ A. Revising paragraph (s)(6)(iii)(B).

■ B. Removing paragraphs (s)(6)(iv), (s)(6)(v), and (s)(6)(vii).

■ C. Redesignating paragraphs (s)(6)(vi), (s)(6)(viii), (s)(6)(ix), (s)(6)(x) and (s)(6)(xi) as paragraphs (s)(6)(iv), (s)(6)(v), (s)(6)(vi), (s)(6)(vii), (s)(6)(viii) respectively.

■ D. In newly redesignated (s)(6)(v), removing the word "paragraphs" and adding in its place "paragraph", and removing the words "through (v)".

■ E. In newly redesignated (s)(6)(vi), removing the word "paragraphs" and adding in its place "paragraph", and removing the words "through (v)".

■ F. Adding a new paragraph (s)(6)(ix).

- G. In paragraph (t)(1), removing the word “an” and adding, in its place, the word “a” and by removing the word “loans” and adding, in its place, the word “loan”.
- H. In paragraph (t)(2), removing the word “The” at the beginning of the sentence, and adding, in its place, the words “For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the” and by removing the words “for the service” and adding, in their place, the words “for each period of service”.
- I. In paragraph (t)(6), removing the word “section” and adding, in its place, the word “paragraph”.
- J. Adding new paragraph (t)(9).
- K. Revising the heading of paragraph (u) and the introductory text to paragraph (u)(1).
- L. In paragraph (u)(1)(ii), adding the words “, on at least a half-time basis,” after the word “enrolled”.
- M. Revising paragraph (u)(2).
- N. In paragraph (u)(3), adding the words “, on at least a half-time basis,” after the word “status” each time it appears.
- O. Redesignating paragraph (u)(4) as (u)(5).
- P. Adding new paragraph (u)(4).

The revisions and additions read as follows:

**§ 682.210 Deferment.**

- \* \* \* \* \*
- (s) \* \* \*
- (6) \* \* \*
- (iii) \* \* \*

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower’s family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

- (A) Live with the borrower; and
- (B) Receive more than half their support from the borrower and will

continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

- \* \* \* \* \*
- (t) \* \* \*

(9) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower’s representative.

(u) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower who receives a FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower’s active duty military service and any applicable grace period if—\* \* \*

(2) As used in paragraph (u)(1) of this section, “active duty” means active duty as defined in section 101(d)(1) of title 10, United States Code for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (u)(2)(i) of this section or full-time National Guard duty under paragraph (u)(2)(ii) of this section.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

- \* \* \* \* \*

- 8. Section 682.211 is amended by:
  - A. Adding a new paragraph (f)(13).
  - B. Adding a new paragraph (f)(14).
  - C. In paragraph (h)(2)(ii)(C), removing the punctuation at the end and adding, in its place, “; and”.
  - D. Adding new paragraph (h)(2)(iii).  
The additions read as follows:

**§ 682.211 Forbearance.**

- \* \* \* \* \*
- (f) \* \* \*

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower’s eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan.

- \* \* \* \* \*
- (h) \* \* \*
- (2) \* \* \*

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in § 682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

- (A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or
- (B) On the day after the borrower ceases at least half-time enrollment, for a FFEL loan in repayment.

- \* \* \* \* \*

- 9. Redesignate § 682.215 as § 682.216.
- 10. Add a new § 682.215 to read as follows:

**§ 682.215 Income-based repayment plan.**

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower’s adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower’s and spouse’s income. For a married borrower filing separately, AGI includes only the borrower’s income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a

parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and  
(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

(i) The total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding

principal amount of eligible loans that are held by the loan holder;

(ii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(ii) and (iii) of this section to loans they hold.

(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

(5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) If the borrower's monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the

principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under an income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The loan holder shall apply any payment made under an income-based repayment plan in the following order:

(i) Accrued interest.  
(ii) Collection costs.  
(iii) Late charges.  
(iv) Loan principal.

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

(3) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).

(4) If the prepayment amount exceeds the monthly payment amount of \$0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the

borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in § 682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the loan holder. The borrower provides consent by signing a consent form and returning it to the loan holder;

(B) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the loan holder may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of \$0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan

described in § 682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly amount of \$0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has a FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in (f)(1) after qualifying for the income-based repayment plan.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(5) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purpose of loan forgiveness, and any payments made on a defaulted loan are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(1) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those

loans for which income-based forgiveness was requested; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(6) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(7) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

(Authority: 20 U.S.C. 1098e)

■ 11. Section 682.300 is amended by:

■ A. In paragraph (b)(1)(ii), removing the word "and" at the end of the sentence.

■ B. In paragraph (b)(1)(iii), removing the punctuation "." and adding, in its place "; and" at the end of the sentence.

■ C. Adding a new paragraph (b)(1)(iv).

■ D. In paragraph (b)(2)(viii), removing the word "or" at the end of the sentence.

■ E. In paragraph (b)(2)(ix), removing the punctuation "." and adding in its place "; or" at the end of the sentence.

■ F. Adding a new paragraph (b)(2)(x).

The additions read as follows:

**§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

\* \* \* \* \*

(2) \* \* \*

(x) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying

portion of the borrower's Consolidation Loan.

\* \* \* \* \*

■ 12. Section 682.302 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (e)(4), removing "(e)(5)" and adding, in its place, "(e)(5) or (f)".

■ C. Revising the introductory text of paragraph (f).

■ D. Revising paragraph (f)(3).

The revisions read as follows:

**§ 682.302 Payment of special allowance on FFEL loans.**

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also paid on the unpaid accrued interest of a loan covered by § 682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

\* \* \* \* \*

(f) *Special allowance rates for loans made on or after October 1, 2007.* With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, other than a loan described in paragraph (e)(5) of this section, the special allowance rate for an eligible loan made during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.

\* \* \* \* \*

(3) *Eligible Not-for-Profit Holder.* (i) For purposes of this section, the term "eligible not-for-profit holder" means an eligible lender under section 435(d) of the Act (except an eligible institution) that requests special allowance payments from the Secretary and that is—

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103-1, or section 144(b) of the Internal Revenue Code of 1986;

(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;

(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(D) A trustee acting as an eligible lender on behalf of an entity that is not an eligible institution and that is a State

or non-profit entity or a special purpose entity for a State or non-profit entity.

(ii) For purposes of paragraph (f)(3) of this section—

(A) The term "State or non-profit entity" means an entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of that Act.

(B) The term "special purpose entity" means an entity established for the limited purpose of financing the acquisition of loans from or at the direction of a State or non-profit entity, or servicing and collecting such loans, and that is—

(1) An entity established by such State or non-profit entity, or

(2) An entity established by an entity described in paragraph (f)(3)(ii)(B)(1) of this section.

(C) A special purpose entity is a "related special purpose entity" with respect to a State or non-profit entity if it holds any interest in loans acquired from or at the direction of that State or non-profit entity or from a special purpose entity established by that State or non-profit entity.

(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such entity—

(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and on or before September 27, 2007 had made or acquired a FFEL loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or

(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.

(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.

(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity or its related special purpose entity, shall not be an eligible not-for-profit holder if the State or non-profit entity or its related special purpose entity is owned or controlled, in whole or in part, by a for-profit entity. For purposes of this paragraph, a for-profit entity has ownership and

control of a State or non-profit entity, or its related special purpose entity, if—

(A) The for-profit entity is a member or shareholder of a State or non-profit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity or its special purpose entity;

(B) The for-profit entity employs or appoints individuals that together constitute a majority of the State, non-profit, or special purpose entity's board of trustees or directors, or a majority of such board's audit committee, executive committee, or compensation committee; or

(C) For a State, non-profit, or special purpose entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in § 600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) "Beneficial owner" (including "beneficial ownership" and "owner of a beneficial interest") means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights

granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) "Sole owner" means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vii)(A) No State or non-profit entity, and no trustee to the extent acting on behalf of such a State or non-profit entity or its related special purpose entity, shall be an eligible not-for-profit holder with respect to any loan or income from any loan on which payment is claimed at the rate established under paragraph (f)(2) of this section, unless such State or non-profit entity or its related special purpose entity is the sole owner of the beneficial interest in such loan and the income from such loan.

(B) A State or non-profit entity that had sole ownership of the beneficial interest in a loan and the income from such loan is considered to retain that sole ownership for purposes of paragraph (f)(3)(vii)(A) of this section if such entity transferred beneficial interest in the loan to its related special purpose entity and no party other than that State or non-profit entity or its related special purpose entity owns any beneficial interest or residual ownership interest in the loan or income from the loan.

(viii)(A) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of a State or non-profit entity or its related special purpose entity in excess of reasonable and customary fees paid for providing the particular service or services that the trustee undertakes to provide to such entity.

(B) Fees are reasonable and customary, for purposes of this paragraph (f)(3)(viii), if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the

State or non-profit entity that the Secretary considers reliable.

(C) Loans owned by the State or non-profit entity or a related special purpose entity for which the trustee receives fees in excess of the amount permitted by paragraph (f)(3)(viii) of this section cease to qualify for a special allowance payment at the rate prescribed under paragraph (f)(2) of this section.

(ix) For purposes of paragraph (f)(3) of this section, if a State or non-profit entity, its related special purpose entity, or a trustee acting on behalf of any of these entities, grants a security interest in, or otherwise pledges as collateral, a loan, or the income from a loan, to secure a debt obligation for which such State or non-profit entity, or its related special purpose entity, is the issuer of that debt obligation, none of these entities shall, by such action—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan.

(x) *Not-for-Profit Holder Eligibility Determination.* A State or non-profit entity that seeks to qualify as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) States the basis upon which the entity qualifies as a State or non-profit entity;

(2) Includes documentation establishing its status as a State or non-profit entity;

(3) Includes the name and lender identification number(s) of the entities for which designation is being certified;

(4) Includes the name of any related special purpose entities that hold any interest in any loan on which special allowance is claimed under paragraph (f)(2) of this section, describes the role of such entity with respect to the loans, and provides with respect to that entity the certifications and documentation described in paragraph (f)(3)(x)(A) and (B) of this section; and

(5) For an entity establishing status under section 150(d) of the Internal Revenue Code of 1986, includes copies of the requests of the State or political subdivision or subdivisions thereof or requirements described in section 150(d)(2) of the Internal Revenue Code and the CEO's additional certification that the entity has not elected under section 150(d)(3) of the Internal Revenue Code to cease its status as a

qualified scholarship funding corporation.

(B) A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, with supporting documentation that shows that the State or non-profit entity—

(1) Is constituted a State entity by operation of specific State law;

(2) Has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d) of the Internal Revenue Code, has not made the election described under section 150(d)(3) of the Internal Revenue Code, and is incorporated under State law as a not-for-profit organization;

(3) Is incorporated under State law as a not-for-profit organization or is an entity described in section 503(c)(3) of the Internal Revenue Code; or

(4) Has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

(xi) *Annual Certification by Eligible Not-for-Profit Holder.* A State or non-profit entity that seeks to retain its eligibility as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must annually provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) Includes the name and lender identification number(s) of the entities for which designation is being recertified;

(2) States that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and

(3) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, and that of any related special purpose entity that holds an interest in loans on which it seeks to claim special allowance at the rate provided under paragraph (f)(2) of this section, at the same time these returns are filed with the Internal Revenue Service.

(xii) *Not-for-Profit Holder Change of Status.* Within 10 business days of becoming aware of the occurrence of a

change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary's determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary's determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change to the date of the Secretary's determination equal to the difference between special allowance at the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

\* \* \* \* \*

■ 13. Section 682.304 is amended by:

■ A. Redesignating paragraph (d)(2) as paragraph (d)(3).

■ B. Adding a new paragraph (d)(2).

■ C. In newly designated paragraph (d)(3), removing the words "paragraph (d)(1)" and adding, in their place, the words "paragraphs (d)(1) and (2)".

The addition reads as follows:

**§ 682.304 Method of computing interest benefits and special allowance.**

\* \* \* \* \*

(d) \* \* \*

(2) To compute the average daily balance of unpaid accrued interest for purposes of special allowance on loans covered by § 682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily

balance for the quarter for qualifying loans at the applicable interest rate.

\* \* \* \* \*

■ 14. Section 682.405 is amended by revising paragraph (b)(4) to read as follows:

**§ 682.405 Loan rehabilitation agreement.**

\* \* \* \* \*

(b) \* \* \*

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

\* \* \* \* \*

**§ 682.411 [Amended]**

■ 15. Section 682.411 is amended, in paragraph (d)(1), by adding the words "income-based repayment" immediately after the words "income-sensitive repayment".

**§ 682.604 [Amended]**

■ 16. Section 682.604 is amended by:  
■ A. In paragraph (g)(2)(ii), removing the words "and income-sensitive" and adding, in their place, the words "income sensitive, and income-based".  
■ B. In paragraph (g)(2)(v), adding the words "forgiveness or" immediately after the words "full or partial", and adding the words "including forgiveness or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program" immediately after the words "of a loan".

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

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

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

■ 18. Section 685.204 is amended by:  
■ A. Adding a heading to paragraph (e).  
■ B. In paragraph (e)(2), removing the word "The" and adding, in its place, the words "For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the" before the word "deferment" and by adding the words "each period of"

before the words “the service described”.

■ C. In paragraph (e)(6) introductory text, removing the word “section” and adding in its place the word “paragraph”.

■ D. Adding a new paragraph (e)(7).

■ E. In paragraph (f), adding the heading “Post-active duty student deferment” before the paragraph designation “(1)”.

■ F. In paragraph (f)(1)(ii), adding the words “on at least a half-time basis” after the word “enrolled”.

■ G. Revising paragraph (f)(2).

■ H. In paragraph (f)(3), adding the words “on at least a half-time basis” after the word “status” each time it appears and the words “grace period or the” before the words “13-month”.

■ I. Adding new paragraph (f)(4).

■ J. In paragraph (h)(1), removing the word “granted”.

The additions and revision read as follows:

**§ 685.204 Deferment.**

\* \* \* \* \*

(e) *Military service deferment.*

\* \* \*

(7) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower’s representative.

(f) *Post-active duty student deferment.*

\* \* \* \* \*

(2) As used in paragraph (f)(1) of this section, “Active Duty” means active duty as defined in section 101(d)(1) of title 10, United States Code, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (f)(2)(i) of this section

or full-time National Guard duty under paragraph (f)(2)(ii) of this section.

\* \* \* \* \*

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization deferment period and the 13-month post-active duty student deferment period apply concurrently.

\* \* \* \* \*

■ 19. Section 685.205 is amended by adding a new paragraph (a)(7) to read as follows:

**§ 685.205 Forbearance.**

\* \* \* \* \*

(a) \* \* \*

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

\* \* \* \* \*

■ 20. Section 685.208 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (m).

The revisions and addition read as follows:

**§ 685.208 Repayment plans.**

(a) *General.* (1) Borrowers who entered repayment before July 1, 2006.

(i) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), (f), (k), and (m) of this section, respectively.

(ii) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (d), and (f) of this section, respectively.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated

repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(ii)(A) A Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income-contingent repayment plan, or the income-based repayment plan in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(B) A Direct PLUS Loan that was made to a parent borrower may be repaid under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (e), and (g) of this section, respectively.

(iii) A borrower may repay a Direct Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or, unless the Direct Consolidation Loan repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan, the income-based repayment plan, in accordance with paragraphs (c), (e), (h), (k), and (m) of this section, respectively. A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may not be repaid under the income-based repayment plan.

(iv) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income contingent repayment plan, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in § 685.209 and § 685.221 for the income contingent

or income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

\* \* \* \* \*

(m) *Income-based repayment plan.* (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) The specific provisions governing the income-based repayment plan are in § 685.221.

■ 21. Section 685.209 is amended by revising paragraph (c)(4) to read as follows:

**§ 685.209 Income contingent repayment plan.**

\* \* \* \* \*

(c) \* \* \*

(4) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes—

(A) Periods in which the borrower makes payments under the income-contingent repayment plan on loans that are not in default;

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(1)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(D) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(E) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(F) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment

plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(G) Periods of economic hardship deferment after October 1, 2007.

\* \* \* \* \*

■ 22. Section 685.210 is amended by revising paragraph (b)(2) to read as follows:

**§ 685.210 Choice of repayment plan.**

\* \* \* \* \*

(b) \* \* \*

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to either the income contingent or income-based repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan or the income-based repayment plan, the repayment period is calculated as described in § 685.209(c)(4) or § 685.221(b)(6), respectively.

\* \* \* \* \*

■ 23. Section 685.211 is amended by:

■ A. Revising paragraph (a)(1).

■ B. Revising paragraph (d)(3)(ii).

The revisions read as follows:

**§ 685.211 Miscellaneous repayment provisions.**

(a) *Payment application and prepayment.* (1) Except as provided for the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan, the Secretary may designate the income contingent repayment plan or the income-based repayment plan for the borrower.

\* \* \* \* \*

■ 24. Section 685.212 is amended by:

■ A. Redesignating paragraph (i) as paragraph (j).

■ B. Adding new paragraph (i) to read as follows:

**§ 685.212 Discharge of a loan obligation.**

\* \* \* \* \*

(i) *Public Service Loan Forgiveness Program.* If a borrower meets the

requirements in § 685.219, the Secretary cancels the remaining principal and accrued interest of the borrower's eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

\* \* \* \* \*

■ 25. A new § 685.219 is added to read as follows:

**§ 685.219 Public Service Loan Forgiveness Program.**

(a) *General.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

*AmeriCorps position* means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

*Eligible Direct loan* means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

*Employee or employed* means an individual who is hired and paid by a public service organization.

*Full-time* (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2612(a)(1) and (3) is not considered in determining the average hours worked on an annual or contract basis.

*Government employee* means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress.

*Law enforcement* means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

*Military service*, for uniformed members of the U.S. Armed Forces or

the National Guard, means “active duty” service or “full-time National Guard duty” as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, “Military service” means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

*Peace Corps position* means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

*Public interest law* refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

*Public service organization* means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated health care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness; and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps position, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209;

(C) A standard repayment plan, as determined in accordance with § 685.208(b); or

(D) Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).

(2) If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps, the Secretary will consider the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

(d) *Forgiveness Amount.* The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) *Application.* (1) After making the 120 monthly qualifying payments on the

eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(Authority: 20 U.S.C. 1087e(m))

■ 26. Section 685.220 is amended by:

■ A. In paragraph (d)(1)(i)(B)(2), removing the word “or”.

■ B. Redesignating paragraph (d)(1)(i)(B)(3) as (d)(1)(i)(B)(4).

■ C. In newly redesignated paragraph (d)(1)(i)(B)(4), adding the words “is in default or” after the word “that”, and changing the period at the end of the paragraph to “; or”.

■ D. Adding new paragraph (d)(1)(i)(B)(3).

■ E. Adding new paragraph (d)(1)(i)(B)(5).

■ F. In paragraph (d)(1)(ii)(A), removing the word “a” and adding, in its place, the words “the grace” before the word “period”.

■ G. In paragraph (d)(1)(ii)(D), adding the words “, or the income-based repayment plan described in § 685.208(m),” after the reference to “§ 685.220(k)” and the words “or § 685.221(e)” after the reference to “§ 685.209(d)(5)”.

The additions read as follows:

**§ 685.220 Consolidation.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) \* \* \*

(3) The borrower wishes to use the Public Service Loan Forgiveness Program;

\* \* \*

(5) The borrower has a FFEL Consolidation Loan and the borrower

wants to consolidate that loan into the Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program.

\* \* \* \* \*

■ 27. A new § 685.221 is added to read as follows:

**§ 685.221 Income-based repayment plan.**

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL or Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and  
(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the

poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Terms of the repayment plan.* (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(2) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

(2) The Secretary adjusts the calculated monthly payment if—

(i) The total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) The calculated amount under paragraph (b)(1) or (b)(2)(i) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount under paragraph (b)(1) or (b)(2)(i) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

(4) Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(5) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* The Secretary applies any payment made under an income-based repayment plan in the following order:

(1) Accrued interest.

(2) Collection costs.

(3) Late charges.

(4) Loan principal.

(d) *Changes in the payment amount.*

(1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based payment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in § 685.208(j) for the amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower

provides consent by signing a consent form and returning it to the Secretary;

(B) If a borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) The Secretary designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b).

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) based on the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Paid Direct Loans under the income-contingent repayment plan.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan after qualifying for the income-based repayment plan; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) If the Secretary determines that a borrower satisfies the loan forgiveness requirements, the Secretary cancels the outstanding balance and accrued interest on the Direct Consolidation Loan described in paragraph (f)(3)(i), (iii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section.

(Authority: 20 U.S.C. 1098e)

■ 28. Section 685.304 is amended by:

■ A. Revising paragraph (b)(4)(ii).

■ B. Revising paragraph (b)(4)(vi).

The revisions read as follows:

**§ 685.304 Counseling borrowers.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, income contingent repayment, and income-based repayment plans, and loan consolidation;

\* \* \* \* \*

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial forgiveness or discharge of a loan;

\* \* \* \* \*

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