

**DEPARTMENT OF EDUCATION****34 CFR Parts 600, 668, and 685**

RIN 1840-AC18

**William D. Ford Federal Direct Loan Program; Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions**

AGENCY: Department of Education.

ACTION: Final Regulations.

**SUMMARY:** This document contains corrections and other technical changes to the William D. Ford Federal Direct Loan (Direct Loan) Program final regulations published in the Federal Register on December 1, 1994 (59 FR 61664). These regulations apply to loans under the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program, collectively referred to as the Direct Loan Program. The Secretary also corrects minor technical errors and omissions in the Institutional Eligibility regulations contained in 34 CFR Part 600, Subpart A, and the Student Assistance General Provisions regulations contained in 34 CFR Part 668, Subpart B.

**EFFECTIVE DATE:** These regulations take effect July 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Merrill, Program Specialist, U.S. Department of Education, 600 Independence Avenue, S.W. (ROB-3, Room 3053), Washington, DC 20202-5400. Telephone: (202) 708-9406. Individuals who use a telecommunications device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following regulations are amended to clarify the regulations and to correct errors and omissions in the text of the Direct Loan Program final regulations published on December 1, 1994 (59 FR 61664), the Institutional Eligibility regulations, 34 CFR Part 600, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

**The Direct Loan Program**

Section 685.102 has been amended to correct a typographical error in a reference to the Federal Family Education Loan (FFEL) Program and to include a reference to grace period, which was inadvertently omitted in the

description of a Direct Subsidized Consolidation Loan under the definition of the Federal Direct Consolidation Loan Program. In order to reflect a statutory change made by the Higher Education Technical Amendments of 1993, Public Law 103-208, this section also has been amended to clarify that a borrower may make satisfactory repayment arrangements on a defaulted Direct Loan for the purposes of regaining title IV eligibility only one time.

Section 685.200 has been amended to accurately reflect the requirement that a student must be enrolled or accepted for enrollment on at least a half-time basis in order to be eligible to receive a Direct Loan. Paragraph (c) of this section has been amended to clarify the definition of "satisfactory repayment arrangement" for the purpose of consolidating a defaulted loan. Further, this section has been amended to correct a grammatical error in the text and an error in a cross-reference to another section in Part 685.

Section 685.202 clarifies the interest rate calculations for Direct Subsidized and Direct Unsubsidized Loans. The 2.5 percentage point adjustment on the interest rate for in-school, grace, and deferment periods only applies to loans first disbursed on or after July 1, 1995. For loans disbursed prior to July 1, 1995, the interest rate calculation for all periods is based on a 3.1 percentage point adjustment.

Paragraphs (b)(1) through (5) of § 685.202 clarify that the Secretary does not capitalize all interest that has accrued on a borrower's principal balance. Instead, the Secretary only capitalizes the amount of interest that accrues on the loan amount that the borrower has not paid.

Paragraph (b)(2) of § 685.202 is amended to clarify that, when a borrower enters repayment, the Secretary will capitalize the unpaid interest that accrued during the in-school and grace periods on a Direct Unsubsidized Consolidation Loan that is eligible for a grace period.

Paragraph (b)(3) of § 685.202 also clarifies the Secretary's intent that the limit on the amount of interest that is capitalized under the Income Contingent Repayment and Alternative Repayment plans does not apply during periods of deferment for unsubsidized loans and does not apply during periods of forbearance for any Direct Loan.

Section 685.204 has been amended to clarify that a Direct Loan borrower who has an outstanding balance on a FFEL Program loan made prior to July 1, 1993, at the time he or she applies for a first Direct Loan, will remain eligible for the FFEL Program deferments on all Direct Loans until all loans with those

deferments are fully repaid, even if the borrower repays the FFEL Program loans in full before the Direct Loans are paid in full.

Section 685.204 also has been amended to add language that reflects the existing policy in the Direct Loan Program that a borrower who has defaulted on the repayment of a Direct Loan generally is not eligible for a deferment. However, comparable to § 682.210(a)(8) in the FFEL Program, § 685.204(e) allows a borrower who has defaulted on a Direct Loan to be eligible for a deferment if the borrower contacts the Direct Loan Servicing Center and makes payment arrangements satisfactory to the Secretary.

Section 685.205 has been corrected to state that a borrower, not the endorser, must be the recipient of a national service educational award in order to qualify for forbearance.

Section 685.212 has been amended to clarify which payments the Secretary returns to a borrower when a loan is discharged. Once the Secretary receives acceptable documentation that a borrower is eligible for a specific discharge, any payments received during the period between the date the borrower met the eligibility requirements and the date the discharge was approved will be returned to the person who sent the payment. Furthermore, any payments received after the date the discharge was approved will be returned to the person who sent the payment.

Section 685.214 has been amended to conform with the technical corrections made in § 685.301.

Section 685.215 has been amended to specify which loans under subpart II of part A of title VII of the Public Health Service Act may be consolidated into a Direct Consolidation Loan. Paragraph (d) of this section is amended to reflect terminology consistent with the definitions in § 685.102(b). This section also has been amended to specify that the limit on collection costs charged to a borrower who consolidates a defaulted loan applies only to defaulted Direct Loans and FFEL Program loans.

Section 685.301 clarifies that, although certain circumstances allow for a late disbursement of a loan, a school must originate a loan while the student meets the borrower eligibility requirements in § 685.200. The terminology in this section has been changed to reflect that schools certify loan information in the Direct Loan Program by means of the origination process.

Section 685.301 also has been amended to clarify that a Direct Loan may be disbursed in a single installment

prior to the midpoint of the loan period if the date of the scheduled disbursement coincides with the beginning of the next scheduled term for which the school has an anticipated disbursement date. For example, a borrower at a term-based school that uses quarter hours would be allowed to receive the first and second Direct Loan disbursements in a single installment at the beginning of the second quarter even though this may occur prior to the midpoint of the loan period.

Section 685.303 has been amended to clarify that a school must determine whether or not a student has continuously maintained eligibility before Direct PLUS proceeds are disbursed to the parent borrower. Paragraph (d) of this section has been amended to clarify that a school may not make a late disbursement to a borrower that exceeds the student's cost of attendance for the period of enrollment completed by the student. Further, paragraph (d) clarifies that a school may not make a late disbursement if the student's last recorded date of attendance is earlier than the 30th day of the period of enrollment if the loan was subject to the 30-day delayed disbursement requirements for first-year, first-time borrowers. These requirements are the same as in the FFEL Program.

Section 685.305 has been amended to clarify those procedures a school must follow for determining the withdrawal date for a student who did not return for the next scheduled term following a summer break. This section also is amended to correct an error in the cross-reference to the Student Assistance General Provisions regulations.

#### Institutional Eligibility

Section 600.5 has been amended to correct a technical error which references the manner in which certified public accountants must examine the accuracy of a proprietary institution's calculations regarding the 85 percent rule contained in § 600.5(a)(8). Paragraph (e) of this section was mistakenly amended in the Federal Register of November 29, 1994, to reference an accountant performing an "agreed-upon procedures attestation engagement." This paragraph has been corrected to accurately reflect the Secretary's intent that a certified public accountant must engage in an "examination" level attestation agreement under which he or she examines management's assertions that it satisfied the 85 percent requirement.

#### General Provisions

Section 668.15 has been amended to clarify that the audit described in paragraph (e)(1) also may be performed by State auditors if they meet the independence requirements of *Government Auditing Standards*.

#### Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors and omissions in the Direct Loan Program final regulations published on December 1, 1994, the Institutional Eligibility regulations, 34 CFR Part 600, and the Student Assistance General Provisions regulations, 34 CFR Part 668. The changes in this document do not establish any new substantive rules. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

#### Executive Order 12866

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

The potential costs associated with these final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

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

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

#### Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

#### Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects

##### 34 CFR Parts 600 and 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student Aid.

##### 34 CFR Part 685

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

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Education Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: June 3, 1996.

Richard W. Riley,  
Secretary of Education.

The Secretary amends Parts 600, 668, and 685 of title 34 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 685 is revised to read as follows:

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

##### **§ 685.102 [Amended]**

2. In § 685.102, paragraph (a)(3), introductory text, after the word "Loan"

remove the word "Program"; in paragraph (b), in the definition of "Federal Direct Consolidation Loan Program", in paragraph (1), add ", grace," after "in-school"; in the definition of "Satisfactory repayment arrangement", at the end of paragraph (1), add a new sentence to read, "A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once."

3. In § 685.200, paragraph (a)(1)(i), add ", or accepted for enrollment, on at least a half-time basis" after the word "enrolled"; in paragraph (b)(7)(iii), remove the word "is" after the word "history"; and paragraph (c) is revised to read as follows:

**§ 685.200 Borrower eligibility.**

\* \* \* \* \*

(c) *Defaulted FFEL Program and Direct Loan borrowers.* Except as noted in § 685.215(d)(1)(ii)(F), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements, as described in paragraph (2) of the definition of that term under § 685.102(b), on the defaulted loan.

\* \* \* \* \*

4. In § 685.202, paragraph (a)(1)(i), before the first sentence, add, "*Loans first disbursed prior to July 1, 1995.*"; remove the words, "in repayment" and add, in their place, "during all periods"; paragraph (a)(1)(ii) is revised; in paragraph (b)(1), add the word "unpaid" before the word "accrued"; in paragraph (b)(2), add "or a Direct Unsubsidized Consolidation Loan that qualifies for a grace period" after "Direct Unsubsidized Loan", add the word "unpaid" before the word "interest"; in paragraph (b)(3), remove the word "For" and add "Notwithstanding § 685.208(g)(5) and § 685.209(d)(3), for" at the beginning of the sentence, add the word "unpaid" after the words "capitalizes the"; in paragraph (b)(4), add the word "unpaid" after the word "capitalizes", remove the words, "payable by the borrower"; in paragraph (b)(5), add the word "unpaid" after the word "capitalize", and remove the words "payable by the borrower" to read as follows:

**§ 685.202 Charges for which Direct Loan Program borrowers are responsible.**

(a) \* \* \*

(1) \* \* \*

(ii) *Loans first disbursed on or after July 1, 1995.*

(A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period

beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

\* \* \* \* \*

5. In § 685.204, in paragraph (b), remove "paragraph (d)" and add, in its place, "paragraphs (d) and (e)"; in paragraph (d) introductory text, add "borrower's first" before "Direct Loan", and add new paragraph (e) to read as follows:

**§ 685.204 Deferment.**

\* \* \* \* \*

(e) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

**§ 685.205 [Amended]**

6. In § 685.205, paragraph (a)(4), remove the words, "or endorser".

7. In § 685.212, paragraph (f) is revised to read as follows:

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

\* \* \* \* \*

(f) *Payments received after eligibility for discharge.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

\* \* \* \* \*

**§ 685.214 [Amended]**

8. In § 685.214, paragraph (a)(1)(iii), before "in the occupation," remove the word "certified" and add, in its place, the word, "originated"; in paragraph (c)(1)(iii)(B), remove the word "certified" and add, in its place, the word, "originated".

9. In § 685.215, paragraph (b)(19), add "and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act" after "(HPSL)"; paragraph (b)(21) is removed; paragraph (b)(22) is redesignated as (b)(21); in redesignated paragraph (b)(21), remove the word "Loans" and add, at the beginning of the paragraph, the words "Nursing loans"; in paragraph (c)(3) remove "(22)" and add, in its place, "(21)"; paragraph (d)(1)(ii)(E) is revised; and, in paragraph (f)(1)(iii), add "Direct Loan or FFEL Program" before the word "loan" to read as follows:

**§ 685.215 Consolidation.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(E) In default but has made satisfactory repayment arrangements, as defined in paragraph (2) of that term under § 685.102(b), on the defaulted loan; or

\* \* \* \* \*

10. In § 685.301, in the section heading, remove the word "Certification" and add, in its place, "Origination"; paragraph (a)(1) is revised; in paragraph (a)(3) introductory text, remove the word "certify" and add, in its place, "originate"; in paragraph (a)(4)(ii), remove the word "certifies" and add, in its place, "originates"; in paragraph (b)(2)(iv), add "or if the date of the first disbursement coincides with the beginning of the second or subsequent semester, quarter, or similar division of the loan period for which the loan was made," after "made" to read as follows:

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

(a) \* \* \*

(1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school shall originate a Direct Loan while the student meets the borrower eligibility requirements of § 685.200. Except as provided in 34 CFR Part 668, subpart E, a school may rely in good faith upon statements made in the application by the student.

\* \* \* \* \*

11. In § 685.303, paragraph (b)(2)(i), add ", or a parent in the case of a PLUS Loan," after "student", remove the words "whom the school determines" and add, in their place, "if the school determines the student"; remove "or" at the end of paragraph (d)(3)(i), remove the period at the end of paragraph

(d)(3)(ii), and add, in its place, a semi-colon, and add new paragraphs (d)(3)(iii) and (iv) to read as follows:

**§ 685.303 Processing loan proceeds.**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*

(iii) A late disbursement to a borrower if the student's last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to the delayed disbursement under § 685.303(b)(4); or

(iv) A late disbursement that, including all prior disbursements, exceeds a student's documented educational costs for the period of enrollment completed by the student before the student ceased to be enrolled at the school on at least a half-time basis.

\* \* \* \* \*

12. Section 685.305 is revised to read as follows:

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

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in 34 CFR 668.22(j) for

determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund must be paid under § 685.306.

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

**PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED**

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

2. Section 600.5 is amended by revising paragraph (e) to read as follows:

**§ 600.5 Proprietary institution of higher education.**

\* \* \* \* \*

(e)(1) An institution shall substantiate the required calculations in paragraph (a)(8) of this section by having the certified public accountant who prepares its audited financial statement required under 34 CFR 668.15 report on the accuracy of its determination that the percentage of its revenues derived from title IV, HEA program funds is not more than 85 percent of its revenues.

(2) The certified public accountant's report shall be based on performing an

examination-level "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements #3, *Compliance Attestation*, and the certified public accountant shall include that attestation report with the audit report referenced in paragraph (e)(1) of this section.

(3) The certified public accountant's attestation report shall indicate whether the institution's determination that the percentage of its revenues derived from title IV, HEA program funds is not more than 85 percent of its revenues, is accurate, i.e. fairly presented in all material respects.

\* \* \* \* \*

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1099c, and 1141, unless otherwise noted.

**§ 668.15 [Amended]**

2. In § 668.15, paragraph (e)(1), in the second sentence, remove, "certified public accountant" and add, in its place, "auditor"; remove "generally accepted auditing standards" and add, in its place, "*Government Auditing Standards*".

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